IMAGED

FILED
2008 SEP -3 AM 10: 55
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	**Case No. CR 1983-12-0614**
vs.	:	
	:	
VON CLARK DAVIS	:	**Judge Nastoff**
Defendant.	:	

DEFENDANT'S SUPPLEMENTAL ANSWER TO REQUEST FOR DISCOVERY

NOW COMES Defendant, by and through his undersigned counsel, and, responding to the State's Motion for Discovery, responds as follows:

A. DOCUMENTS AND TANGIBLE OBJECTS, CRIMINAL RULE 16(C)(1)(a):

1. Summary of interview of Elizabeth Crawford
2. Summary of interview of Fannie Whiteside
3. Summary of interview of Charles Flowers
4. Affidavit of Milton Flowers
5. Affidavit of Dr. Orlando Hernandez, M.D.
6. Affidavit of Dr. James I. Fidelholtz, M.D.

WHEREFORE, the Defendant reserves the right to utilize any discovery provided by the State in its Answers of Discovery. Defendant reserves the right to supplement this response upon identification of additional evidence.

B. REPORTS OF EXAMINATIONS OR TESTS, CRIMINAL RULE 16(B)(1)(d):

Repper, Pagan, Cook, Ltd.
Attorneys at Law
1501 First Avenue
Middletown, OH 45044
Phone: 513.424.1823
FAX: 513.424.3135

309

WHEREFORE, the Defendant reserves the right to utilize any discovery provided by the State in its Answers of Discovery. Defendant reserves the right to supplement this response upon identification of additional evidence.

C. WITNESSES' NAMES AND ADDRESSES, CRIMINAL RULE 16(C)(1)(c):

WHEREFORE, the Defendant reserves the right to utilize any discovery provided by the State in its Answers of Discovery. Defendant reserves the right to supplement this response upon identification of additional evidence.

Respectfully submitted,

Melynda Cook-Reich (SC# 0066596)
REPPER, PAGAN, COOK
Attorney for Defendant
1501 First Avenue
Middletown, OH 45044
(513) 424-1823; Fax (513)424-3135

and

Randall Porter (SC#0005835)
Assistant State Public Defender
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
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(614) 644-0703 (Facsimile)
PorterR@OPD.state.OH.US

COUNSEL FOR VON CLARK DAVIS

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Phone: 513.424.1823
FAX: 513.424.3135

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered via hand delivery to Daniel G. Eichel, First Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney by leaving same at the Office of the Butler County Prosecuting Attorney, 11th Floor, 315 High Street, Hamilton, Ohio 45011, on this day September 3rd, 2009.

Melynda Cook-Reich

Melynda Cook-Reich (SC# 0066596)

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Phone: 513.424.1823
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CONFIDENTIAL
ATTORNEY WORK PRODUCT

Elizabeth Crawford (Paternal Aunt) Davis
[redacted]

Interviewed by John Lee and Peggy Kent on 7/13/93 in the home of her mother, Grace Ayers. Mrs. Ayers resides at [redacted] Hamilton, Ohio. Her phone number is [redacted]

Elizabeth Crawford is the paternal aunt of our client, Von Davis. Grace Ayers is Von's paternal grandmother. Elizabeth was the primary respondent in the interview but she would sometimes refer questions on the family history to her 84-year old mother who was present. Both Elizabeth and Grace were able to offer some historical perspectives on Von's father's side of the family, however, they had limited contact with Von during his childhood.

- Liz reported her parents are Grace Ayers and Thomas Elliot Davis. Her father, Thomas, died in 1972.

  Liz reported her parents had 3 children:

  Phyllis Scott - D.O.B. [redacted] - resides at [redacted] Teaneck, N.J. Ph.# [redacted]

  Nick Davis - D.O.B. [redacted] - deceased

  Elizabeth Davis - D.O.B. [redacted]

- Liz reported her brother, Nick, drowned in December of 1974. His body was found in a river in Washington, D.C., which Liz found to be strange. In addition to be an excellent swimmer, the family could not understand how he could have gotten down too the river's edge because he walked with a cane.

- Liz reported all of the Davis children were born in Hamilton. There were no problem pregnancies in births.

  Grace reported only Liz had a serious childhood illness, spinal meningitis. Nick was a healthy child who had no developmental problems.

- Liz reported her father worked as a porter on the railroad and her mother worked as an office cleaner at Ohio Casualty.

- Liz reported her mother was in charge of the household but both parents disciplined the children. Nick got more spankings than his sisters for not doing what he was supposed to do. He also would take some spankings for his sister (take blame for her acts) in exchange for whatever sweets she had. (cookies, candy, etc.)

- Liz recalled Nick did not do well in school. He had a temper that resulted in numerous schoolyard fights. Nick attended Harrison Elementary

and Roosevelt Jr. High before dropping out in the seventh grade. Both Liz and Grace reported Nick was sent to Boys Industrial School in Cleveland when he was about 15 or 16 years old. Nick was placed in B.I.S. for truancy and fighting. Grace believed he remained in BIS for 6 months. When Nick was released, he did not re-enroll in school.

- Grace reported Nick returned to Hamilton after his release and went to work for a local dry cleaners for a brief period prior to enlisting in the Navy. Nick left school during his ninth grade year at Roosevelt Jr. High School.

  Nick enlisted in the service in September of 1944 but he met and dated Alluster prior to his enlistment. Liz believes that Alluster might be two years older than Nick. Nick completed one term in the service (2 or 3 years) and returned to Hamilton after being discharged honorably.

- Liz nor Grace could recall when Nick and Alluster were married but they both agreed their first child Elliot was born after Nick left the service. Liz believes the couple had their own apartment by the time Elliot was born.

- Liz reported that she went to school with Alluster in Hamilton. Liz also recalled that Alluster was not a woman to bother because she was tough. According to Liz, "you didn't bother her. She didn't go around starting things but when the deal went down, she ended it." Liz recalled children rarely picked on Alluster because she was a good fighter.

- Liz reported she knew Alluster's mom as Vick, but she did not have much contact with Alluster's mother.

- Liz recalled that Nick and Alluster "got into it" frequently. She did not know if the police were ever called but she does not think that was the case.

- Liz reported that both Nick and Alluster drank but Nick was the heavier drinker of the two. She believed that her brother had a long term problem with alcohol but he never sought professional help for his problem.

- Liz recalled at the funeral of their father, Nick, who had been drinking, "fell out" and had to be caught by other family members. Nick also had to go to court at one time for taking an unauthorized trip to Detroit in the Von belonging to his employer. Liz believes these actions were part of a drinking binge but Nick did not have to go to jail for theft. Liz believes it was after this incident that Nick left his family for good and went to live in Washington, D.C. with his father. (Liz reported her parents had been separated for a while when Nick moved to D.C.) At the time Nick moved to D.C. all his children had been born but his divorce from Alluster had not been finalized.

- Liz reported drank a lot and he had a temper. She believes it was that combination that caused the marriage to break up. Despite Nicks excessive weekend drinking, he did provide for the family financially and when he was sober, he was a decent father. Liz recalled that her brother was far from "A-1" as a father but he was never physically abusive towards his children.

- Liz recalled Alluster never complained to other family members about Nick. In addition to his alcoholism, Nick was known to see other women while he was married. Liz did not know if Nick had children from any of his extramarital relations.

- Liz reported Nick and Alluster had five children: "Butch" (Elliot), Von, Carol, Greg and Victor.

- Liz described Von as a quiet little boy. "He was not a slow child just a quiet child." Von seemed normal developmentally and he got along with his peers. Liz could not recall Von being a problem child behaviorally. Liz did not know how far Van went in school or how he did academically.

- Liz recalled Von went into the Navy after he left school and that he seemed to be glad when he got out. Liz was not aware of any particular goals Von had. She recalled he did work as an auto body man, as well as a dental technician.

- Liz could not recall Von having any major illness as an adult or as a child. She also had no knowledge of Von using drugs or alcohol.

- Liz reported her first awareness of Von encountering legal problems came when he killed his wife, Ernestine. She recalled he was incarcerated for 8 or 9 years. When he was released from prison, Von did not talk about his time in prison. He seemed essentially the same to Liz when he got out, quiet.

- Liz reported when Von was sent to prison for the second time, she wrote to him early on but Von never responded.

CONFIDENTIAL
ATTORNEY WORK PRODUCT

Fannie Whiteside [redacted] Davis
[redacted]
Forest Park, Ohio
Phone [redacted]
DOB: [redacted]

Interviewed by John Lee and Peggy Kent at her home on 6/23/93.

- Fannie Whiteside is the maternal great aunt of Von Davis. Fannie made it clear that she had very limited contact with Von or with his mother Alluster. She was able to give some limited social history on Alluster but because of the age difference and the fact she moved away from Hamilton when she married, very little of significance was offered. Fannie also stated that she is in favor of the death penalty.

- Fannie reported Alluster's mother was Hattie Bailey. Fannie did not believe Hattie was married at the time of Alluster's birth. Alluster was born in St. Louis where Hattie was living with her sister, Allie Bailey. Both Allie and Hattie moved to Hamilton, Ohio together. Allie, who is Fannie's oldest sister, helped raise Alluster's children. Fannie believes at one point Allie told Von that Nicholas Davis was not his father. Fannie does not know if that is the case.

- Fannie recalled that Hattie Bailey worked full time at a factory until her retirement which is why Alluster was raised essentially by her grandmother, Evelyn Bailey, and Aunt Allie.

- Fannie recalled Alluster did not attend school regularly which later impaired her ability to keep a job. She does not believe Alluster had a problem with drugs or alcohol.

- According to Fannie, Alluster liked to have a good time and ran around with several men. Fannie thinks that three of her children Von, Victor and Charles may have had different fathers.

- Fannie did not know how old Alluster was when she married Nick Davis. Fannie thought Nick was "O.K." The only other information she could offer regarding Nick was that he worked in a pressing shop and died in Michigan. She believes they were married about ten years.

- Fannie believes Nick's mother may still be living in Oxford, Ohio.

- Fannie has no recollection of Von as a child or as an adult. "All I know is he killed two women." Fannie did not know either of the women.

- Fannie was told by other family members that he did not deal with his two daughters when he was released from prison. His oldest daughter tried to contact him on several occasions but Von would not see her. Fannie believes that the children were present when their mother was killed. Fannie currently has no contact with Von's children.

CONFIDENTIAL
ATTORNEY WORK PRODUCT

Dr. Charles Flowers
Virginia Beach, Virginia
Phone #(804-460-7501 (work)

Von Clark Davis

Interviewed by John Lee and Steve Cheney on 6/9/93 via telephone.

Charles Flowers is an academic and guidance counselor in the Virginia Beach City Schools. He hails from Hamilton, Ohio and had some knowledge of Von's parents. Dr. Flowers was able to give some limited historical perspectives on the Davis family and a few insights on Von. Dr. Flowers can be contacted in the mornings at the number above.

- Charles reported having taught in the Hamilton City Schools for six years, however, Von was never one of his students. His knowledge of Von and the Davis family came from having grown up with Von's parents in the same neighborhood in Hamilton.

- Charles described his neighborhood, Forest Park, as a poor, predominantly Black, working-class neighborhood. Most of the parents of his peers were from the south and had little education. Church attendance was stressed and most of the families attended either a baptist or methodist church.

- Charles reported Von's mother, Alluster, lacked religious development as a child. Alluster was reared in the home of her maternal grandmother, Mrs. Bailey, who was a member of what Charles characterized as a "fringe" church (a holiness church). Charles believes Alluster's lack of direction, both domestically and spiritually, may have contributed to her "wild" nature.

- Charles believes Alluster's mother was Vicki Bailey and he did not recall whether or not Vicki was married at the time of Alluster's birth.

- Vicki lived with her mother, Mrs. Bailey, at the time of Alluster's birth along with numerous aunts and uncles. Charles recalled that Mrs. Bailey was the matriarch of the family and "all the children were under her; Alluster had two mothers."

- Charles, who lived next door to the Bailey home, recalled there were few positive role models in the home because all the uncles and Vicki were all "drinkers and carousers." Charles would not be specific but he speculated that morals in the Bailey home were rather loose.

- Charles described Alluster as a "happy-go-lucky" kid, who was not a good student. There was an emphasis on behaving in the Bailey home and if you did not you got a whipping. Charles also reported Alluster had a temper and if you got in her face, she would fight you. Charles reported she fought almost daily and may have been suspended from school at some time.

- Charles reported Alluster got pregnant either in junior high school or early in high school. He believes the father was Nick Davis. Charles believes Alluster left her grandmother's home to live with Nick about a year after the birth of her first child. (Charles believes Alluster was between the ages of 15 and 17).

- Charles remembered Nick Davis as being a very popular young man in Hamilton. Nick did not finish high school; however, his sister, Elizabeth Davis Herbert, was an honor student. Charles believes Elizabeth still resides in Forest Park. Charles has no knowledge of the whereabouts of any other Davis family members.

- Charles reported Nick and Alluster had 3 children before they married. Charles stated that there was some speculations in the community that Alluster's fourth child was not fathered by Nick. Charles did not know who the father might have been.

- Charles recalled that Alluster and Nick fought frequently. Most of the arguments centered on Nick's absence from the family home. Charles reported that Nick would continue to go night clubbing during his wife's pregnancies when she could not. Nick also traveled to Chicago and Detroit frequently for unknown reasons. Charles reported Alluster and Nick fought physically and the children saw them.

- Charles described Von as a very poor student who had no academic discipline, "just like his mother." He also believes that Von did not have good male role modeling because of the "parade of men" in and out of the home.

- Charles believed Von learned to hate women because he was always being whipped by one, be it his mother or one of his female relatives. Charles stated that he thinks a great deal of Alluster's anger from her childhood carried over to her adult life, and that unresolved anger resulted in numerous whippings for Von.

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff-Respondent,	:	
-vs-	:	Case No. CR 83-12-0614
VON CLARK DAVIS,	:	
Defendant-Petitioner.	:	

EXHIBIT U

AFFIDAVIT OF MILTON FLOWERS

STATE OF OHIO,

COUNTY OF BUTLER, SS:

I, Milton Flowers, being first duly sworn according to law, state the following:

1) I am a family friend of Petitioner Davis.

2) I became acquainted with Petitioner's family when I lived next door to them in Hamilton, Ohio. Petitioner's mother, Alluster, was just a baby. In addition to Alluster, Alluster's mother, Hattie Bailey, and Alluster's grandmother lived in the home.

3) I really did not believe that Hattie Bailey had all her marbles. She was no mother at all to Alluster. If it were not for Alluster's grandmother and her uncle Tecumsah, I do not know what would have happened to Alluster.

4) Hattie did not care what Alluster would do; she just wanted Alluster to stay out of her way.

5) Hattie was a violent character who would become abusive. She would say a lot of things she would be sorry for later.

6) Alluster, like her mother, had a violent temper. It did not take much for her to get upset. She got into numerous fights.

7) Alluster married Petitioner's father, Nick Davis, at a very young age. When Alluster and Nick were first married, there were at times food shortages in their home.

8) Alluster was just about like Hattie as a mother.

9) After Nick and Alluster separated, there were a lot of men in and out of Alluster's life. The quality of care for the children, including Von, was poor.

10) Von was very small as a child. He suffered because of his size; he felt as if he were being taken advantage of.

11) Von had a violent temper. At times when he was angry, the other kids would have to catch and hold him until he cooled down.

12) Von would have violent outbursts in school. These outbursts were like those that Alluster and Hattie had.

13) I feel that Von is a product and victim of his environment. He faced rejection both at home and in the community.

14) Von was really out there on his own while he was growing up. He was not able to go home to talk to anyone.

15) I would have been willing to testify on Von's behalf at his original capital trial in 1984 and at his resentencing in 1989.

16) I love Von and do not want him to be executed.

Further Affiant saith naught.

Milton B. Flowers
MILTON FLOWERS

Sworn to and subscribed in my presence this 28th day of September 1993.

NOTARY PUBLIC

JOANN M. BOUR-STOKES, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	**Case No. CR 1983-12-0614**
vs.	:	
VON CLARK DAVIS	:	**Judge Nastoff**
Defendant.	:	

AFFIDAVIT OF DR. ORLANDO HERNANDEZ, M.D.

State of Ohio,

County of Hamilton, ss:

I, Dr. Orlando Hernandez, after being duly sworn according to law, state as follows:

1. I am a medical doctor and have been licensed in the State of Ohio ~~for twenty years.~~ since 1998 DH My office address is 2827 Orchardpark Drive, Cincinnati, Ohio 45239. I am affiliated with Bethesda North Hospital, ~~Fort Hamilton Hughes Memorial Hospital~~ DH, and Jewish Hospital of Cincinnati.

2. I work ~~for~~ with DH Glendale Place Care Center, which is a skilled nursing facility. In that capacity I am the treating physician for Fannie Whiteside.

3. Ms. Whiteside is a person with Alzheimer's disease, Senile Dementia, and significant memory loss.

4. Because of these deficits, she is not able to communicate clearly, and suffers from short and long term memory loss.

5. It is my opinion, within a reasonable degree of medical certainty, that Ms. Whiteside, because of her Alzheimer's disease, Senile Dementia, and significant memory loss, is unable to accurately recollect impressions or observations she had of past events and as a result she will not be able to accurately relate those impressions or observations to the Court.

6. Further affiant sayeth naught.

Dr. Orlando Hernandez

Sworn and subscribed to me this the 2nd day of September, 2009

Angie Wiley
Notary Public

NOTARIAL SEAL STATE OF OHIO

ANGIE WILEY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MAY 4, 2013

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	**Case No. CR 1983-12-0614**
vs.	:	
VON CLARK DAVIS	:	**Judge Nastoff**
Defendant.	:	

AFFIDAVIT OF DR. JAMES I. FIDELHOLTZ, M.D.

State of Ohio,
County of Hamilton, ss:

I, Dr. James I. Fidelholtz, after being duly sworn according to law, state as follows:

1. I am a medical doctor and have been licensed in the State of Ohio for thirty-three years. My office address is 6103 Hamilton Avenue, Suite A, Cincinnati, Ohio 45224. My area of specialty is internal medicine and I have a subspecialty of geriatric medicine.

2. I am affiliated with Good Samaritan Hospital in Dayton, Ohio; Mercy Hospital in Fairfield, Ohio; Mercy Franciscan Hospital in Mt. Airy, Ohio: and Deaconess Hospital in Evansville, Indiana.

3. I am the treating physician for Elizabeth Crawford. She is a person with Dementia.

4. It is my opinion, within a reasonable degree of medical certainty, that Ms. Crawford, because of her Dementia, is unable to accurately recollect impressions or observations she had of past events and as a result she will not be able to accurately relate those impressions or observations to the Court.

5. Further affiant sayeth naught.

Dr. James I. Fidelholtz

Sworn and subscribed to me this the 2nd day of September, 2009

Angie Wiley
Notary Public

ANGIE WILEY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES MAY 4, 2013

IMAGED
2009 SEP -4 AM 11:12
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO	:	**CASE NO. CR83-12-0614**
Plaintiff	:	
vs.	:	**ENTRY GRANTING FUNDS FOR OUT OF STATE**
VON CLARK DAVIS	:	**WITNESS APPEARANCE**
Defendant	:	**JUDGE NASTOFF**

: : : : :

Upon application of counsel and for good cause shown,

IT IS HEREBY ORDERED THAT the Auditor of Butler County Ohio shall issue a check in the amount of $560.45 to Delbert Flowers, a resident of the State of Maryland whose appearance has already been secured via a subpoena. This sum is for Payment for Mr. Flowers as a Witness for mileage, travel, and witness fees in the above entitled matter which is set for a Mitigation Trial before this Court beginning September 8-11, 2009.

In the event that these funds are not issued immediately, the monies for this Witness' fees and travel will be guaranteed by the Court.

NASTOFF, J.

310

IMAGED

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, :

Plaintiff, : **Case No. CR 1983-12-0614**

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
SEP 04 2009
CINDY CARPENTER
CLERK OF COURTS

vs. :

VON CLARK DAVIS **Judge Nastoff**

Defendant. :

DEFENDANT'S SUPPLEMENTAL ANSWER TO REQUEST FOR DISCOVERY

NOW COMES Defendant, by and through his undersigned counsel, and, responding to the State's Motion for Discovery, responds as follows:

A. DOCUMENTS AND TANGIBLE OBJECTS, CRIMINAL RULE 16(C)(1)(a):

WHEREFORE, the Defendant reserves the right to utilize any discovery provided by the State in its Answers of Discovery. Defendant reserves the right to supplement this response upon identification of additional evidence.

B. REPORTS OF EXAMINATIONS OR TESTS, CRIMINAL RULE 16(B)(1)(d):

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C. WITNESSES' NAMES AND ADDRESSES, CRIMINAL RULE 16(C)(1)(c):

1. Dr. Orlando Hernandez — 2827 Orchardpark Drive, Cincinnati, OH 45239

2. Dr. James I. Fidelholtz — 6103 Hamilton Ave., Suite A, Cincinnati, OH 45224

Repper, Pagan, Cook, Ltd.
Attorneys at Law
1501 First Avenue
Middletown, OH 45044
Phone: 513.424.1823
FAX: 513.424.3135

311

WHEREFORE, the Defendant reserves the right to utilize any discovery provided by the State in its Answers of Discovery. Defendant reserves the right to supplement this response upon identification of additional evidence.

Respectfully submitted,

Melynda Cook-Reich (SC# 0066596)
REPPER, PAGAN, COOK
Attorney for Defendant
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(513) 424-1823; Fax (513)424-3135

and

Randall Porter (SC#0005835)
Assistant State Public Defender
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COUNSEL FOR VON CLARK DAVIS

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Attorneys at Law
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Middletown, OH 45044
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FAX: 513.424.3135

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered via Fax to Daniel G. Eichel, First Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney by leaving same at the Office of the Butler County Prosecuting Attorney, 11th Floor, 315 High Street, Hamilton, Ohio 45011, on this day September 4, 2009.

Melynda Cook-Reich (SC# 0066596)

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Attorneys and Counselors at Law
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Middletown, OH 45044
513-424-1823
fax # 513-424-3135

Fax

To: Butler County Clerk; APA Michael Oster; APA Dan Eichel

From: Melynda Cook-Reich

Fax: (513) 887-3966; (513) 887-3489

Date: September 4, 2009

Phone:

Pages: 4

Re: State of Ohio v. Von Clark Davis
Case No. CR1983-12-0614

CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments: Attached please find Defendant's Supplemental Answer to Discovery to be filed with the Court with regards to the above-referenced case.

THIS MESSAGE AND ACCOMPANYING DOCUMENTS ARE INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH THEY ARE ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE RECEIVER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY WARNED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

From the desk of...
Ashley Streck
Legal Assistant

FILED
2009 SEP -8 PM 12:17
DINAH CARPENTER
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

IMAGED

STATE OF OHIO,	:	
Plaintiff,	:	**Case No. CR 1983-12-0614**
vs.	:	**Judge Nastoff (Presiding Judge)**
VON CLARK DAVIS	:	**Judge Prater**
Defendant.	:	**Judge Spaeth**

VON CLARK DAVIS EXHIBIT LIST

A	Autopsy of Ernestine Davis
B	Death certificate of Charles Flowers
C	Death certificate of Milton Flowers
D	Affidavit of Dr. James Fidelholtz, M.D.
E	Affidavit of Dr. Orlando Hernandez, M.D.
F	Summary of July 13, 1993 interview of Elizabeth Crawford
G	Summary of June 9, 1993 interview of Charles Flowers
H	Affidavit of Milton Flowers, executed September 28, 1993
I	Summary of June 23, 1993 interview of Fannie Whiteside
J	Institutional Summary, Von Davis
K	DRC Record-Budget Inmate Costs as of 5/14/09
L	Curriculum Vitae – Dr. Robert Smith

312

Respectfully submitted,

Melynda Cook-Reich (SC# 0066596)
REPPER, PAGAN, COOK
Attorney for Defendant
1501 First Avenue
Middletown, OH 45044
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(513)424-3135 (Facsimile)
Mcook@bizcinci.rr.com

and

Randall Porter (SC#0005835)
Assistant State Public Defender
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394 (Voice)
(614) 644-0703 (Facsimile)
PorterR@OPD.state.OH.US

COUNSEL FOR VON CLARK DAVIS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was hand delivered to Daniel G. Eichel, Assistant Butler County Prosecuting Attorney, and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorney by leaving same at the Office of the Butler County Prosecuting Attorney, 11th Floor, 315 High Street, Hamilton, Ohio 45011, on this day September 8, 2009.

Randall L. Porter
Counsel for Von Clark Davis

C000197157

BUTLER COUNTY SHERIFF'S OFFICE

IMAGED

RETURN OF CRIMINAL SUBPOENA
COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

STATE OF OHIO

vs.

VON CLARK DAVIS

CASE NUMBER: CR 1983 12 0614

DATE ISSUED: August 19, 2009

FILE
2009 SEP -9 PM
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

COURT DATE: 09/08/09 THROUGH 09/11/09

WITNESS INFORMATION:
Name: VICTOR DAVIS
Address: [redacted]T
HAMILTON, OH 45013

SHERIFF'S INSTRUCTIONS: This Subpoena is required to be personally served upon the party named above.

2009 SEP 3 16:14

DOCUMENTED ATTEMPTS AT SERVICE:
Date: 08-25-09 0840 NC 1109
Date:
Date:

PERSONAL SERVICE:
Signature: Victor L. Davis

PERFECTED SERVICE:
Date: _____ Time: _____

ALTERNATE SUBJECT SERVED:
Signature: _____
Printed Name: _____
Relationship: _____

FAILURE OF SERVICE:
Reason for failure: _____

SHERIFF'S FEES:
Mileage: 1.50
Return of Service: 6.00
TOTAL FEES: 7.50

Deputy: _____
Badge Number: _____

CIVIL DIVISION
DATA ENTRY OF FEES
Initial: BM
Date: SEP 0 9 2009

File this document with Butler County Clerk of Courts

CINDY CARPENTER CLERK OF COURTS

IMAGED

WITNESS SUBPOENA COPY:
LISA LINK
[redacted]
CINTI, OH 45239

Date: August 28, 2009 Case No.: CR 1983 12 0614
STATE OF OHIO VS VON CLARK DAVIS

SUBPOENA SERVED BY PROCESS SERVER
COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

TYPE OF SUBPOENA: SENTENCE HEARING

To the above named Witness: You are hereby commanded to appear in the Common Pleas Court of Butler County Ohio at the Government Services Center, 315 High Street, 3RD Floor, Hamilton, Ohio 45011.

DATE: SETPEMBER 8 2009 TIME: 9:00 AM

JUDGE: NASTOFF

You are required to attend and give testimony on behalf of the plaintiff/defendant in the above captioned case under penalty of law.

To apply for payment for your services as a witness after testimony, bring this subpoena to the office of the Butler County Clerk of Courts.

CINDY CARPENTER
Butler County Clerk of Courts

REQUESTING ATTORNEY:
NAME: ROBIN PIPER
ADDRESS: 315 HIGH ST
CITY& STATE: HAMILTON OH
ZIP: 45011
PHONE: (513)887-3474

By: SHONDA ERTEL
Deputy Clerk

WITNESS CERTIFICATION
I attest that I appeared to give testimony in the above captioned case. I was present in the Court of Common Pleas for _____days. As an out of county witness, I traveled 20 miles from the city of CINCINNATI in the State OHIO

SIGNATURE: Witness

GOVERNMENT SERVICES CENTER • 315 HIGH STREET • SUITE 550 • HAMILTON, OHIO 45011-6016

BUTLER COUNTY CLERK OF COURTS
www.butlercountyclerk.org

IMAGED

COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

STATE OF OHIO	*	**Case No.: CR03-12-0614**
	*	
Plaintiff	*	**Judge Nastoff**
	*	
vs.	*	**VERDICT FORM**
	*	
VON CLARK DAVIS	*	
	*	
Defendant	*	
	*	

* * * * * * * * * * * *

FILED
2009 SEP 11 AM 8:43
BUTLER COUNTY
CLERK OF COURTS

We, the three-judge panel, do hereby find the aggravating circumstance that the Defendant was found guilty of committing:

_____ **Does not outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt.**

__✓__ **Does outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt.**

"Enter"

Date: Sept 10, 2009

_____
Andrew Nastoff, Judge

_____
Charles L. Pater, Judge

_____
Keith M. Spaeth, Judge

313

IMAGED

FILED
2009 SEP 21 PM 4:07
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

STATE OF OHIO : **CASE NO. CR1983–12-0614**

Plaintiff : **STATE OF OHIO**
COUNTY OF BUTLER

vs. : **COURT OF COMMON PLEAS**
Nastoff, P.J.; Pater and Spaeth, JJ.

VON CLARK DAVIS :

PRIORITY

Defendant : **JUDGMENT OF CONVICTION ENTRY**
[This is a Final Appealable Order.]

: : : : : : : : : : : :

This 8th-10th days of September, 2009, came the Prosecuting Attorney into Court and the Defendant personally appearing with his counsel, Melynda W. Cook-Reich and Randall L. Porter, and the charges, plea of Not Guilty, and Findings of the three-judge panel as to Count One with Specification being set forth in the previous Entry which is expressly included herein by reference. Wherefore, the Defendant being informed that he stands convicted of **AGGRAVATED MURDER** contrary to R.C. 2903.01(A) with **Specification to Count One** pursuant to R.C. 2929.04(A)(5) as charged in Count One of the Indictment, the Court afforded counsel an opportunity to speak on behalf of the Defendant, and the Court addressed the Defendant personally and asked if he wished to make a statement in his own behalf or present any information in mitigation of punishment, and after having heard all the facts adduced by both parties, the panel of three judges having engaged in a determination of sentence for Count One pursuant to the requirements of R.C. 2929.03(D) and having unanimously found, by proof beyond a reasonable doubt, that the aggravating circumstance the Defendant was found guilty of committing outweighs the mitigating factors presented herein, and nothing being shown as to why sentence should not now be pronounced,

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ROBIN PIPER
PROSECUTING ATTORNEY

GOVERNMENT SERVICES CENTER
315 HIGH ST. - 11TH FLOOR
P.O. BOX 515
HAMILTON, OHIO 45012

314

It is **ORDERED** as to **Count One** that the **sentence of death** shall be imposed upon the Defendant, which sentence is imposed pursuant to R.C. 2929.02(A) and 2929.03 – 2929.04, said sentence being in addition to a term of imprisonment previously imposed by journal entry as to **Count Two**. Defendant is **FURTHER ORDERED** to pay all costs of prosecution. The Sheriff is hereby **ORDERED** to convey the Defendant to the custody of the **Ohio Department of Rehabilitation and Correction**, forthwith. Defendant was further advised of all of his rights pursuant to Criminal Rule 32, including his right to appeal the judgment, his right to appointed counsel at no cost, his right to have court documents provided to him at no cost, and his right to have a notice of appeal filed on his behalf.

ENTER

ANDREW NASTOFF, Presiding Judge

CHARLES L. PATER, Judge

KEITH M. SPAETH, Judge

Approved as to Form:
ROBIN N. PIPER (0023205)
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO
DGE/MAO
09/15/2009

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ROBIN PIPER
PROSECUTING ATTORNEY

GOVERNMENT SERVICES CENTER
315 HIGH ST. - 11TH FLOOR
P.O. BOX 515
HAMILTON, OHIO 45012

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CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

IMAGED

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	*	**Case Number: CR1983 12 0614**
	*	
Plaintiff,	*	**Judge Andrew Nastoff, Presiding**
	*	**Judge Charles Pater**
vs.	*	**Judge Keith M. Spaeth**
	*	
VON CLARK DAVIS,	*	**SENTENCING OPINION**
	*	
Defendant.	*	
	*	

* * * * * * * * * * * * * * * * * * * *

The Court issues this sentencing opinion pursuant to R.C. 2929.03(F).

On January 6, 1984, the Butler County Grand Jury returned a two count indictment against Defendant. Count One of the indictment charged Defendant with aggravated murder in violation of R.C. 2903.01(A) with two specifications. Specification One charged that prior to the offense at bar, Defendant was convicted of murder in the second degree, in violation of R.C. 2901.05 on April 20, 1971, an essential element of which was the purposeful killing of another as specified in R.C. 2929.04(A)(5). Specification Two charged that Defendant had a firearm on or about his person or under his control while committing the offense set forth in Count One, as specified in R.C. 2929.71. Count Two charged Defendant with having weapons under disability in violation of R.C. 2923.13(A)(2).

Defendant pled not guilty to all of the charges and specifications. Defendant waived his right to a jury trial and requested that the matter be tried to a three-judge panel.

Beginning May 4, 1984, Defendant was tried by a three-judge panel that found

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

Defendant guilty of all charges and specifications. On May 29, 1984, the trial's sentencing phase commenced. At the conclusion of the sentencing phase, the three-judge panel held that the aggravating circumstance outweighed the mitigating factors beyond a reasonable doubt and sentenced Defendant to death.

On September 14, 1988, the Ohio Supreme Court held that the three-judge panel erred by considering and weighing non-statutory aggravating circumstances against mitigating factors when it imposed Defendant's death sentence. The Ohio Supreme Court affirmed Defendant's convictions, but reversed his sentence and remanded the case to the trial court for resentencing.

On remand, Defendant sought to introduce additional mitigation evidence in the form of testimony from prison personnel employed at the Southern Ohio Correctional Facility in Lucasville, Ohio. Defendant argued that the testimony was relevant because it showed good behavior while on death row. The reconstituted three-judge panel did not permit Defendant to offer additional mitigation evidence. Instead, the panel simply reconsidered the evidence presented at the original sentencing phase. Once again, the panel found that the sole aggravating circumstance outweighed the mitigating factors beyond a reasonable doubt and imposed the death penalty.

Both the Twelfth District Court of Appeals and Ohio Supreme Court affirmed Defendant's death sentence. Defendant then petitioned the United States District Court for the Southern District of Ohio for a writ of habeas corpus. The District Court denied

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

Defendant's petition. On appeal, the United States Court of Appeals for the Sixth Circuit reversed Defendant's death sentence, holding that the trial court erred at resentencing when it barred Defendant from presenting new mitigation evidence concerning his good behavior while on death row. On January 29, 2007, the Sixth Circuit remanded the matter to the District Court. On July 19, 2007, the District Court granted Defendant's writ of habeas corpus conditioned upon the State of Ohio granting Defendant a new sentencing hearing.

On remand, this Court assumed jurisdiction over the instant case. On December 19, 2007, to comply with the mandate handed down from the federal courts, this Court granted Defendant a new sentencing hearing. Because the original three-judge panel could not reconstitute, the undersigned three-judge panel was formed pursuant to R.C. 2929.06 and Ohio Rule of Criminal Procedure 25(B).

Pursuant to R.C. 2929.03 and R.C. 2929.04, the undersigned three-judge panel presided over Defendant's resentencing hearing from September 8, 2009 through September 10, 2009 to determine whether the single aggravating circumstance in this case outweighed the mitigating factors beyond a reasonable doubt.

AGGRAVATING CIRCUMSTANCE

In this case, the aggravating circumstance that is to be weighed against the mitigating factors is as follows: that prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of another. R.C. 2929.04(A)(5).

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

The State of Ohio re-introduced the journal entry of conviction filed in Butler County Common Pleas Case Number 21655 reflecting Defendant's 1971 conviction for second degree murder in violation of R.C. 2901.05. The State further offered portions of the 1984 trial transcript to show then-defense counsel's stipulation to the 1971 entry of conviction, its pertinence to Defendant, and that an essential element of R.C. 2901.05 was the purposeful killing of another. The evidence established that the victim of Defendant's prior purposeful killing was his wife, Ernestine. The State submitted no other evidence. The Court accepted the aforementioned evidence to the extent that it was relevant to the aggravating circumstance committed in this case.

MITIGATING FACTORS

Mitigating factors are factors which, while they do not justify or excuse the crime, nevertheless in fairness and mercy, may be considered as they call for a penalty less than death, or lessen the appropriateness of a sentence of death. Mitigating factors are those factors about an individual that weigh in favor of a decision that a sentence of life in prison is the appropriate sentence.

As requested by Defendant and in accordance with R.C. 2929.04(B), the Court has weighed against the aggravating circumstance the nature and circumstances of the offense, the history, character, and background of the Defendant, and all of the following:

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

1. Any other factors that are relevant to the issue of whether the offender should be sentenced to death (R.C. 2929.04(B)(7)):

A. Borderline personality disorder;

B. Alcohol abuse;

C. Love and support of family members and friends;

D. Testimony of Defendant's daughter, Sherry Davis, regarding her forgiveness of Defendant for the purposeful killing of her mother;

E. Good behavior while in prison;

F. Childhood and family experience, and the impact of each upon Defendant's personality development and mental health;

G. Remorse and apology;

H. Age (62 years old);

I. Probability of no release from prison;

J. Whether a sentence of life in prison would bring closure to the victim's family;

K. The savings to taxpayers should a life sentence be imposed.

It must be noted that Defendant did not request a pre-sentence investigation or mental examination pursuant to R.C. 2929.03(D)(1); therefore, neither were ordered for the Court's review and deliberation. In consideration of the aforementioned factors, the Court heard evidence from the following individuals.

Family and Friends

The Court heard testimony from Defendant's mother (Alluster Tipton), step-father (Charles Tipton), younger sister (Carol Smith), younger brother (Victor Davis), daughter (Sherry Davis), and two friends (Rick Rotundo and Fran Welland).

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

The testimony of each witness centered on Defendant's positive aspects and his importance in their lives. Each witness testified to maintaining some amount of contact with Defendant, despite his incarceration on death row. Each witness opposed the re-imposition of the death penalty in this case.

Prison Personnel

The Court also heard testimony from Defendant's prison case manager, Scott Nowak, regarding Defendant's positive prison record and his position on death row's "extended privilege unit" or "honor block." The Court reviewed Defendant's institutional summary, which revealed no more than a single occurrence of prison misconduct since 1984. Defendant's sole instance of misconduct occurred in 1990.

The Court also heard testimony from Jeremy Stineman, who conducted Alcoholics Anonymous meetings with death row inmates, including Defendant, for several years. Stineman testified that Defendant regularly attended meetings and participated actively.

Cynthia Mausser

The Court heard testimony from Cynthia Mausser, Chairperson of the Ohio Parole Board, who described the Parole Board's various policies and procedures. Defense counsel posed hypothetical questions to Mausser, who testified that an individual with Defendant's background is "unlikely" to be paroled at the first opportunity, and would "likely" spend a substantial portion of his adult life in prison. Mausser could not, however, state with any certainty if or when Defendant might be paroled if this Court imposed a sentence less than

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

death. Mausser did testify that if Defendant became parole-eligible, he would be considered for parole at intervals ranging from one to ten years for the rest of his life. Mausser testified that in each instance, the victim's family would be notified and could appear to voice opposition to Defendant's release.

Dr. Robert Smith

Finally, the Court heard testimony from clinical psychologist and certified addiction specialist, Dr. Robert Smith. Dr. Smith recounted Defendant's social history, including interviews that he conducted with Defendant's family members, some of whom testified during the mitigation phase of this trial. Dr. Smith also reviewed the interview summaries of other individuals who were familiar with the Defendant. Additionally, Dr. Smith reviewed Defendant's prior psychological evaluations, conducted between 1964 and 2002. After conducting interviews and reviewing summaries and evaluations, Dr. Smith met with Defendant twice. Each visit lasted approximately five to six hours. Dr. Smith testified that the aforementioned interviews and evaluations, in the aggregate, provided a sufficiently "rounded" and "longitudinal" picture of the Defendant for purposes of rendering a diagnosis.

Dr. Smith found that at the time of the offense at bar, Defendant suffered from borderline personality disorder and alcohol dependence. Dr. Smith found that Defendant suffers from these co-occurring disorders to this day. In Dr. Smith's opinion, a biological component exists with respect to the borderline personality disorder. It is Dr. Smith's belief that Defendant's borderline personality disorder formed in early adolescence when

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

Defendant's dysfunctional childhood environment and the biological component coalesced. Dr. Smith testified that his diagnosis does not excuse or justify Defendant's actions in killing Suzette Butler, but offers some explanation as to how or why the killing occurred.

Dr. Smith testified that Defendant's good behavior while in prison is not surprising, given that individuals with borderline personality disorder function well in a highly structured environment such as prison. Ultimately, however, Dr. Smith failed to forecast Defendant's behavior or recommend a treatment plan, should he eventually be released from prison.

FINDINGS

In order to sentence Defendant to death, the law requires that the three-judge panel find beyond a reasonable doubt that the aggravating circumstance in this case outweighs the mitigating factors. The panel must consider the evidence presented as to the aggravating circumstance that transformed the offense of aggravated murder from a case in which death was not a potential penalty to one in which death is a potential penalty. This aggravating circumstance must be then weighed against the mitigating factors that would weigh in favor of a decision that a sentence of life in prison is the appropriate sentence.

The weighing process is just that. The panel must place the aggravating circumstance on one side and place all of the mitigating factors on the other, and then determine beyond a reasonable doubt whether the aggravating circumstance outweighs the mitigating factors. Proof beyond a reasonable doubt mandates that this panel have a firm

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

belief or conviction in what is to be established. Proof beyond a reasonable doubt requires that an ordinary person be willing to act upon that proof in the most important of his or her own affairs.

The aggravating circumstance in this case relates that prior to committing the aggravated murder of Suzette Butler with prior calculation and design, Defendant was previously convicted of purposefully killing Ernestine Davis. The three-judge panel unanimously finds that the aggravating circumstance deserves great weight.

Against the aggravating circumstance, the panel weighs the following mitigating factors:

In accordance with R.C. 2929.04(B), the panel finds nothing mitigating about the nature and circumstances of the offense itself.

The panel has considered the testimony offered to show that Defendant is loved and supported by family and friends. This evidence is not atypical and does not deserve significant weight. The panel has also considered the testimony of Sherry Davis and the fact that she has forgiven Defendant for purposefully killing her mother; however, the panel affords this factor very little weight. The panel further considered the testimony of Defendant's friends and family concerning his dysfunctional family and childhood experiences. The panel finds the testimony to be unconvincing and entitled to little or no weight.

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

The panel considered the impact of Defendant's family experiences upon his personality development and mental health, as detailed in Dr. Robert Smith's testimony. The panel finds that the separate testimony of Defendant's family and friends does not support Dr. Smith's conclusion that Defendant suffered an extreme and dysfunctional upbringing. Nevertheless, assuming that Defendant's background contributed in some way to the development of Defendant's borderline personality disorder and alcohol dependence, the panel still finds that Dr. Smith's diagnosis, even if valid, is entitled to little weight in mitigation.

The panel considered the testimony of Cynthia Mausser offered to show the probability that Defendant would never be released from prison if given a sentence less than death. The panel unanimously finds this evidence to be highly speculative and unconvincing and entitled to no weight.

The panel considered the Defendant's good behavior while in prison, the Defendant's advanced age, and the Defendant's remorse and apology during his unsworn statement. The panel attributes little weight to each factor.

Finally, Defendant proposed that the panel should consider that a life sentence in this case would be economically beneficial to taxpayers and would bring closure to the victim's family. The panel is uncertain whether these factors are relevant mitigating factors under Ohio law; nonetheless, the panel considered Defendant's evidence and arguments to ensure that he had a full opportunity to present all mitigating evidence during the sentencing phase.

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

After considering evidence and testimony relevant to these factors, the panel affords them no weight.

The panel must weigh all of the relevant mitigating factors, adjudge the collective weight of the factors, and determine if the sole aggravating circumstance in this case outweighs the mitigating factors beyond a reasonable doubt.

In performing that task, the Judges of this panel unanimously find that the aggravating circumstance outweighs, beyond a reasonable doubt, the individual and the aggregate of the mitigating factors present in this case. Therefore, the panel finds that the sentence of death shall be imposed upon the Defendant, Von Clark Davis.

SO ORDERED.

ENTER,

Andrew Nastoff, Judge

Charles Pater, Judge

Keith M. Spaeth, Judge

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

cc:

Michael A. Oster, Jr.
Assistant Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45011

Randall L. Porter
Assistant State Public Defender
8 East Long Street – 11th Floor
Columbus, Ohio 43215

Melynda Cook-Reich
REPPER, PAGAN, COOK, Ltd.
1501 First Avenue
Middletown, Ohio 45042

IMAGED

The Supreme Court of Ohio
Rule 37(B) Capital Case Report

Daniel Andrew Nastoff
Reporting Judge

09/09
Reporting Month and Year

Butler
County

Case Information

CR83-12-0614
Case Number

Von Clark Davis
Defendant's Name

12/22/83
Date Filed

10/2/07
Date Case Assigned to Reporting Judge

FILED BUTLER CO.
COURT OF APPEALS
SEP 22 2009
CINDY CARPENTER
CLERK OF COURTS

Description of Counts *(attach additional sheets if necessary)*

1 Ct. I, Aggravated Murder, w/ Spec. I - Prior conviction of Murder, Spec. II - Firearm
2 Ct. II, Having Weapons Under Disability
3
4
5
6

Disposition of Counts *(attach additional sheets if necessary)*

	Date of Disposition	Disposition Code	If Disposition Code H (Other), describe manner of disposition
1	09/10/09	H	Resentencing by three-Judge panel
2		Code	
3		Code	
4		Code	
5		Code	
6		Code	

Disposition Codes
A. Nolle prosequi
B. Dismissal for lack of speedy trial
C. Guilty or no contest plea (to judge)
D. Guilty or no contest plea (to three-judge panel)
E. Trial by jury
F. Trial by three-judge panel
G. Not guilty by reason of insanity
H. Other

If defendant was found guilty of a capital offense, was death imposed? Yes ☑ No ☐

☐ Check if additional sheets are attached

Judge Signature

09/22/09
Date

Fax or mail to:
Case Management Section
The Supreme Court of Ohio
65 South Front Street, 6th Floor
Columbus, Ohio 43215-3431
Fax 614.387.9419

July 1, 2009

314

COURT OF COMMON PLEAS
Butler County

315 High Street, Third Floor
Hamilton, Ohio 45011
513-887-3290
Fax 513-887-3621

Judges
Trial Division
Craig D. Hedric
Andrew Nastoff
Patricia J. Oney
Charles L. Pater
Noah E. Powers
Michael J. Sage
Keith M. Spaeth

Judge
Andrew Nastoff

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COURT OF APPEALS
SEP 22 2009
CINDY CARPENTER
CLERK OF COURTS

September 22, 2009

Kristina D. Frost, Clerk
Office of the Clerk
The Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, Ohio 43215

In Re: State of Ohio vs. Von Clark Davis, CR83-12-0614

Dear Clerk:

The above-captioned case was returned to this Court from District Court in October, 2007, for resentencing. The mitigation hearing in this case was heard September 8 through 10, 2009 by a three-judge panel. I am, therefore, enclosing a copy of a Capital Case Report. The original Report has been faxed to the Case Management Section of the Ohio Supreme Court. Also enclosed are a copy of the Judgment of Conviction Entry and Sentencing Opinion, filed September 21, 2009.

These documents are being sent to you for filing pursuant to O.R.C. 2929.03(F), the law effective at the time of the original sentencing in this case.

If you need any further information, please feel free to contact me through the means above.

Sincerely,

Andrew Nastoff, Judge

ms

Enclosures

COURT OF COMMON PLEAS
Butler County

315 High Street, Third Floor
Hamilton, Ohio 45011
513-887-3290
Fax 513-887-3621

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SEP 22 PM 1:11
CLERK OF COURTS

Judges
Trial Division
Craig D. Hedric
Andrew Nastoff
Patricia J. Oney
Charles L. Pater
Noah E. Powers
Michael J. Sage
Keith M. Spaeth

Judge
Andrew Nastoff

September 22, 2009

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COURT OF APPEALS
SEP 22 2009
CINDY CARPENTER
CLERK OF COURTS

Mr. Ben Manning
Court Administrator
Twelfth District Court of Appeals
1001 Reinartz Boulevard
Middletown, Ohio 45044

In Re: State of Ohio vs. Von Clark Davis, CR83-12-0614

Dear Ben:

The above-captioned case was returned to this Court from District Court in October, 2007, for resentencing. The mitigation hearing in this case was heard September 8 through 10, 2009 by a three-judge panel. I am, therefore, enclosing copies of the Judgment of Conviction Entry and Sentencing Opinion, filed September 21, 2009.

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If you need any further information, please feel free to contact me through the means above.

Sincerely,

Andrew Nastoff, Judge

ms

Enclosures

FILED BUTLER CO.
COURT OF APPEALS
SEP 22 2009
CINDY CARPENTER
CLERK OF COURTS

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	*	**Case Number: CR1983 12 0614**
	*	
Plaintiff,	*	**Judge Andrew Nastoff, Presiding**
	*	**Judge Charles Pater**
vs.	*	**Judge Keith M. Spaeth**
	*	
VON CLARK DAVIS,	*	**SENTENCING OPINION**
	*	
Defendant.	*	
	*	

* * * * * * * * * * * * * * * * * * * *

The Court issues this sentencing opinion pursuant to R.C. 2929.03(F).

On January 6, 1984, the Butler County Grand Jury returned a two count indictment against Defendant. Count One of the indictment charged Defendant with aggravated murder in violation of R.C. 2903.01(A) with two specifications. Specification One charged that prior to the offense at bar, Defendant was convicted of murder in the second degree, in violation of R.C. 2901.05 on April 20, 1971, an essential element of which was the purposeful killing of another as specified in R.C. 2929.04(A)(5). Specification Two charged that Defendant had a firearm on or about his person or under his control while committing the offense set forth in Count One, as specified in R.C. 2929.71. Count Two charged Defendant with having weapons under disability in violation of R.C. 2923.13(A)(2).

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Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

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On remand, Defendant sought to introduce additional mitigation evidence in the form of testimony from prison personnel employed at the Southern Ohio Correctional Facility in Lucasville, Ohio. Defendant argued that the testimony was relevant because it showed good behavior while on death row. The reconstituted three-judge panel did not permit Defendant to offer additional mitigation evidence. Instead, the panel simply reconsidered the evidence presented at the original sentencing phase. Once again, the panel found that the sole aggravating circumstance outweighed the mitigating factors beyond a reasonable doubt and imposed the death penalty.

Both the Twelfth District Court of Appeals and Ohio Supreme Court affirmed Defendant's death sentence. Defendant then petitioned the United States District Court for the Southern District of Ohio for a writ of habeas corpus. The District Court denied

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

Defendant's petition. On appeal, the United States Court of Appeals for the Sixth Circuit reversed Defendant's death sentence, holding that the trial court erred at resentencing when it barred Defendant from presenting new mitigation evidence concerning his good behavior while on death row. On January 29, 2007, the Sixth Circuit remanded the matter to the District Court. On July 19, 2007, the District Court granted Defendant's writ of habeas corpus conditioned upon the State of Ohio granting Defendant a new sentencing hearing.

On remand, this Court assumed jurisdiction over the instant case. On December 19, 2007, to comply with the mandate handed down from the federal courts, this Court granted Defendant a new sentencing hearing. Because the original three-judge panel could not reconstitute, the undersigned three-judge panel was formed pursuant to R.C. 2929.06 and Ohio Rule of Criminal Procedure 25(B).

Pursuant to R.C. 2929.03 and R.C. 2929.04, the undersigned three-judge panel presided over Defendant's resentencing hearing from September 8, 2009 through September 10, 2009 to determine whether the single aggravating circumstance in this case outweighed the mitigating factors beyond a reasonable doubt.

AGGRAVATING CIRCUMSTANCE

In this case, the aggravating circumstance that is to be weighed against the mitigating factors is as follows: that prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of another. R.C. 2929.04(A)(5).

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

The State of Ohio re-introduced the journal entry of conviction filed in Butler County Common Pleas Case Number 21655 reflecting Defendant's 1971 conviction for second degree murder in violation of R.C. 2901.05. The State further offered portions of the 1984 trial transcript to show then-defense counsel's stipulation to the 1971 entry of conviction, its pertinence to Defendant, and that an essential element of R.C. 2901.05 was the purposeful killing of another. The evidence established that the victim of Defendant's prior purposeful killing was his wife, Ernestine. The State submitted no other evidence. The Court accepted the aforementioned evidence to the extent that it was relevant to the aggravating circumstance committed in this case.

MITIGATING FACTORS

Mitigating factors are factors which, while they do not justify or excuse the crime, nevertheless in fairness and mercy, may be considered as they call for a penalty less than death, or lessen the appropriateness of a sentence of death. Mitigating factors are those factors about an individual that weigh in favor of a decision that a sentence of life in prison is the appropriate sentence.

As requested by Defendant and in accordance with R.C. 2929.04(B), the Court has weighed against the aggravating circumstance the nature and circumstances of the offense, the history, character, and background of the Defendant, and all of the following:

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

1. Any other factors that are relevant to the issue of whether the offender should be sentenced to death (R.C. 2929.04(B)(7)):

A. Borderline personality disorder;

B. Alcohol abuse;

C. Love and support of family members and friends;

D. Testimony of Defendant's daughter, Sherry Davis, regarding her forgiveness of Defendant for the purposeful killing of her mother;

E. Good behavior while in prison;

F. Childhood and family experience, and the impact of each upon Defendant's personality development and mental health;

G. Remorse and apology;

H. Age (62 years old);

I. Probability of no release from prison;

J. Whether a sentence of life in prison would bring closure to the victim's family;

K. The savings to taxpayers should a life sentence be imposed.

It must be noted that Defendant did not request a pre-sentence investigation or mental examination pursuant to R.C. 2929.03(D)(1); therefore, neither were ordered for the Court's review and deliberation. In consideration of the aforementioned factors, the Court heard evidence from the following individuals.

Family and Friends

The Court heard testimony from Defendant's mother (Alluster Tipton), step-father (Charles Tipton), younger sister (Carol Smith), younger brother (Victor Davis), daughter (Sherry Davis), and two friends (Rick Rotundo and Fran Welland).

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

The testimony of each witness centered on Defendant's positive aspects and his importance in their lives. Each witness testified to maintaining some amount of contact with Defendant, despite his incarceration on death row. Each witness opposed the re-imposition of the death penalty in this case.

Prison Personnel

The Court also heard testimony from Defendant's prison case manager, Scott Nowak, regarding Defendant's positive prison record and his position on death row's "extended privilege unit" or "honor block." The Court reviewed Defendant's institutional summary, which revealed no more than a single occurrence of prison misconduct since 1984. Defendant's sole instance of misconduct occurred in 1990.

The Court also heard testimony from Jeremy Stineman, who conducted Alcoholics Anonymous meetings with death row inmates, including Defendant, for several years. Stineman testified that Defendant regularly attended meetings and participated actively.

Cynthia Mausser

The Court heard testimony from Cynthia Mausser, Chairperson of the Ohio Parole Board, who described the Parole Board's various policies and procedures. Defense counsel posed hypothetical questions to Mausser, who testified that an individual with Defendant's background is "unlikely" to be paroled at the first opportunity, and would "likely" spend a substantial portion of his adult life in prison. Mausser could not, however, state with any certainty if or when Defendant might be paroled if this Court imposed a sentence less than

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

death. Mausser did testify that if Defendant became parole-eligible, he would be considered for parole at intervals ranging from one to ten years for the rest of his life. Mausser testified that in each instance, the victim's family would be notified and could appear to voice opposition to Defendant's release.

Dr. Robert Smith

Finally, the Court heard testimony from clinical psychologist and certified addiction specialist, Dr. Robert Smith. Dr. Smith recounted Defendant's social history, including interviews that he conducted with Defendant's family members, some of whom testified during the mitigation phase of this trial. Dr. Smith also reviewed the interview summaries of other individuals who were familiar with the Defendant. Additionally, Dr. Smith reviewed Defendant's prior psychological evaluations, conducted between 1964 and 2002. After conducting interviews and reviewing summaries and evaluations, Dr. Smith met with Defendant twice. Each visit lasted approximately five to six hours. Dr. Smith testified that the aforementioned interviews and evaluations, in the aggregate, provided a sufficiently "rounded" and "longitudinal" picture of the Defendant for purposes of rendering a diagnosis.

Dr. Smith found that at the time of the offense at bar, Defendant suffered from borderline personality disorder and alcohol dependence. Dr. Smith found that Defendant suffers from these co-occurring disorders to this day. In Dr. Smith's opinion, a biological component exists with respect to the borderline personality disorder. It is Dr. Smith's belief that Defendant's borderline personality disorder formed in early adolescence when

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

Defendant's dysfunctional childhood environment and the biological component coalesced. Dr. Smith testified that his diagnosis does not excuse or justify Defendant's actions in killing Suzette Butler, but offers some explanation as to how or why the killing occurred.

Dr. Smith testified that Defendant's good behavior while in prison is not surprising, given that individuals with borderline personality disorder function well in a highly structured environment such as prison. Ultimately, however, Dr. Smith failed to forecast Defendant's behavior or recommend a treatment plan, should he eventually be released from prison.

FINDINGS

In order to sentence Defendant to death, the law requires that the three-judge panel find beyond a reasonable doubt that the aggravating circumstance in this case outweighs the mitigating factors. The panel must consider the evidence presented as to the aggravating circumstance that transformed the offense of aggravated murder from a case in which death was not a potential penalty to one in which death is a potential penalty. This aggravating circumstance must be then weighed against the mitigating factors that would weigh in favor of a decision that a sentence of life in prison is the appropriate sentence.

The weighing process is just that. The panel must place the aggravating circumstance on one side and place all of the mitigating factors on the other, and then determine beyond a reasonable doubt whether the aggravating circumstance outweighs the mitigating factors. Proof beyond a reasonable doubt mandates that this panel have a firm

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

belief or conviction in what is to be established. Proof beyond a reasonable doubt requires that an ordinary person be willing to act upon that proof in the most important of his or her own affairs.

The aggravating circumstance in this case relates that prior to committing the aggravated murder of Suzette Butler with prior calculation and design, Defendant was previously convicted of purposefully killing Ernestine Davis. The three-judge panel unanimously finds that the aggravating circumstance deserves great weight.

Against the aggravating circumstance, the panel weighs the following mitigating factors:

In accordance with R.C. 2929.04(B), the panel finds nothing mitigating about the nature and circumstances of the offense itself.

The panel has considered the testimony offered to show that Defendant is loved and supported by family and friends. This evidence is not atypical and does not deserve significant weight. The panel has also considered the testimony of Sherry Davis and the fact that she has forgiven Defendant for purposefully killing her mother; however, the panel affords this factor very little weight. The panel further considered the testimony of Defendant's friends and family concerning his dysfunctional family and childhood experiences. The panel finds the testimony to be unconvincing and entitled to little or no weight.

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

The panel considered the impact of Defendant's family experiences upon his personality development and mental health, as detailed in Dr. Robert Smith's testimony. The panel finds that the separate testimony of Defendant's family and friends does not support Dr. Smith's conclusion that Defendant suffered an extreme and dysfunctional upbringing. Nevertheless, assuming that Defendant's background contributed in some way to the development of Defendant's borderline personality disorder and alcohol dependence, the panel still finds that Dr. Smith's diagnosis, even if valid, is entitled to little weight in mitigation.

The panel considered the testimony of Cynthia Mausser offered to show the probability that Defendant would never be released from prison if given a sentence less than death. The panel unanimously finds this evidence to be highly speculative and unconvincing and entitled to no weight.

The panel considered the Defendant's good behavior while in prison, the Defendant's advanced age, and the Defendant's remorse and apology during his unsworn statement. The panel attributes little weight to each factor.

Finally, Defendant proposed that the panel should consider that a life sentence in this case would be economically beneficial to taxpayers and would bring closure to the victim's family. The panel is uncertain whether these factors are relevant mitigating factors under Ohio law; nonetheless, the panel considered Defendant's evidence and arguments to ensure that he had a full opportunity to present all mitigating evidence during the sentencing phase.

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

After considering evidence and testimony relevant to these factors, the panel affords them no weight.

The panel must weigh all of the relevant mitigating factors, adjudge the collective weight of the factors, and determine if the sole aggravating circumstance in this case outweighs the mitigating factors beyond a reasonable doubt.

In performing that task, the Judges of this panel unanimously find that the aggravating circumstance outweighs, beyond a reasonable doubt, the individual and the aggregate of the mitigating factors present in this case. Therefore, the panel finds that the sentence of death shall be imposed upon the Defendant, Von Clark Davis.

SO ORDERED.

ENTER,

Andrew Nastoff, Judge

Charles Pater, Judge

Keith M. Spaeth, Judge

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

cc:

Michael A. Oster, Jr.
Assistant Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45011

Randall L. Porter
Assistant State Public Defender
8 East Long Street – 11th Floor
Columbus, Ohio 43215

Melynda Cook-Reich
REPPER, PAGAN, COOK, Ltd.
1501 First Avenue
Middletown, Ohio 45042

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

BUTLER CO
COURT OF APPEALS
SEP 22 2009
FILED
CINDY CARPENTER
CLERK OF COURTS
2009 SEP 22 PM
BUTLER COUNTY
CLERK OF COURTS
SEP 21 2009
CINDY CARPENTER
CLERK OF COURTS

STATE OF OHIO	:	**CASE NO. CR1983–12-0614**
Plaintiff	:	**STATE OF OHIO** **COUNTY OF BUTLER** **COURT OF COMMON PLEAS**
vs.	:	Nastoff, P.J.; Pater and Spaeth, JJ.
VON CLARK DAVIS	:	
Defendant	:	**PRIORITY** **JUDGMENT OF CONVICTION ENTRY** *[This is a Final Appealable Order.]*

: : : : : : : : : : :

This 8th-10th days of September, 2009, came the Prosecuting Attorney into Court and the Defendant personally appearing with his counsel, Melynda W. Cook-Reich and Randall L. Porter, and the charges, plea of Not Guilty, and Findings of the three-judge panel as to Count One with Specification being set forth in the previous Entry which is expressly included herein by reference. Wherefore, the Defendant being informed that he stands convicted of **AGGRAVATED MURDER** contrary to R.C. 2903.01(A) with **Specification to Count One** pursuant to R.C. 2929.04(A)(5) as charged in Count One of the Indictment, the Court afforded counsel an opportunity to speak on behalf of the Defendant, and the Court addressed the Defendant personally and asked if he wished to make a statement in his own behalf or present any information in mitigation of punishment, and after having heard all the facts adduced by both parties, the panel of three judges having engaged in a determination of sentence for Count One pursuant to the requirements of R.C. 2929.03(D) and having unanimously found, by proof beyond a reasonable doubt, that the aggravating circumstance the Defendant was found guilty of committing outweighs the mitigating factors presented herein, and nothing being shown as to why sentence should not now be pronounced,

OFFICE OF
ROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ROBIN PIPER
ROSECUTING ATTORNEY

OVERNMENT SERVICES CENTER
315 HIGH ST. - 11TH FLOOR
P.O. BOX 515
HAMILTON, OHIO 45012

It is **ORDERED** as to **Count One** that the **sentence of death** shall be imposed upon the Defendant, which sentence is imposed pursuant to R.C. 2929.02(A) and 2929.03 – 2929.04, said sentence being in addition to a term of imprisonment previously imposed by journal entry as to **Count Two**. Defendant is **FURTHER ORDERED** to pay all costs of prosecution. The Sheriff is hereby **ORDERED** to convey the Defendant to the custody of the **Ohio Department of Rehabilitation and Correction**, forthwith. Defendant was further advised of all of his rights pursuant to Criminal Rule 32, including his right to appeal the judgment, his right to appointed counsel at no cost, his right to have court documents provided to him at no cost, and his right to have a notice of appeal filed on his behalf.

ENTER

ANDREW NASTOFF, Presiding Judge

CHARLES L. PATER, Judge

KEITH M. SPAETH, Judge

Approved as to Form:
ROBIN N. PIPER (0023205)
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO
DGE/MAO
09/15/2009

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ROBIN PIPER
PROSECUTING ATTORNEY

GOVERNMENT SERVICES CENTER
315 HIGH ST. - 11TH FLOOR
P.O. BOX 515
HAMILTON, OHIO 45012

CR-83-12-0614

IMAGED

Track Shipments

Tracking Detail

Your package has been delivered. To view Proof of Delivery, please select the link.

Tracking Number:	1ZX695240148873043
Status:	Delivered
Delivered On:	09/23/2009 10:27 A.M.
Signed By:	LANDRUM
Location:	RECEPTION
Delivered To:	COLUMBUS, OH, US
Shipped/Billed On:	09/22/2009
Type:	Package
Service:	NEXT DAY AIR
Weight:	1.00 Lb

Need to send e-mail notifications?

Use UPS Quantum View Notify® to send delivery or exception notifications.

E-mail Notifications

To view additional tracking information, please log in to My UPS.

NOTICE: UPS authorizes you to use UPS tracking systems solely to track shipments tendered by or for you to UPS for delivery and for no other purpose. Any other use of UPS tracking systems and information is strictly prohibited.

BUTLER COUNTY CLERK OF COURTS
2009 SEP 23 PM 1:20
FILED

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number:	1ZX695240148873043
Service:	NEXT DAY AIR
Weight:	1.00 Lb
Shipped/Billed On:	09/22/2009
Delivered On:	09/23/2009 10:27 A.M.
Delivered To:	COLUMBUS, OH, US
Signed By:	LANDRUM
Location:	RECEPTION

Thank you for giving us this opportunity to serve you.

Sincerely,

UPS

Tracking results provided by UPS: 09/23/2009 3:29 P.M. ET

Butler County
DAILY SHIPMENT DETAIL REPORT
22-Sep-2009 - 3:08:42 PM

Pickup Date: 22-Sep-2009
Pickup Record No.: 6300 0264 45

UPS Account No.: X69524
Sorted By: Order of Shipment

All charges are in USD; fuel surcharge included where applicable.

Ship To: Kristina D. Frost, Clerk
The Supreme Court of Ohio
8th Floor
Office of the Clerk
65 South Front Street
COLUMBUS OH 43215
United States

10 Mmon Pleas Court
Judge Nastoff

Service Type:	NEXT DAY AIR	Shipment Service Charge:	18.62
Total Packages:	1		
Billable Wt.:	1.0 lb		
Transportation:	Shipper		
Tracking No.:	1ZX695240148873043	Package Service Charge:	18.62
Package Type:	Package		
Weight:	1.0 lb	UPS Total Charge:	18.62

Summary Totals:

Shipment Option	Shpts	Pkgs	Pub Charges
Package Option		Pkgs	Pub Charges

Billing Option	Shpts	Pkgs	Pub Charges
Prepaid	3	3	29.40
TOTAL CHARGES			29.40

3 Shipment(s)
3 Package(s)

All charges are in USD; fuel surcharge included where applicable.
Your invoice may vary from the displayed rates.
* Indicates Shipper-Paid Declared Value

UPS WorldShip 11.0.15 winspool 1

IMAGED

FILED
2009 OCT 22 PM 3:24
CINDY CARLSON
BUTLER COUNTY
CLERK OF COURTS

TRANSCRIPT REQUEST

FILE

Case No. CR92-12-0614
CR83-12-0614

Date of request: 10-19-09

Requesting Party: RANDALL PORTER

Phone No. 614-752-9215

Indigent Defendant: (yes)____(no)____

Case Caption: VON CLARK DAVIS

Filed in Court of Appeals: (yes)____(no)____

Type of hearings and dates: RESENTENCING

Judge: NASTOFF

Requested Completion date: _____

CD#s: _____

Transcriptionist: Jill

Additional notes:

Copies to: WHITE - Attach to Entry
GREEN - Requesting Party
CANARY - Court Reporter
PINK - Bailiff
GOLD - Prosecutor

IMAGED

REQUEST FOR COURT PAID EXPERTS AND/OR EXPENSES

FILED
2008 NOV -2 PM 12:34
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

In the Common Pleas Court of Butler County, Ohio.

Plaintiff: State of Ohio

Case No. CR 1983-12-0614

v. Von Clark Davis

Attorney(s) for the Defendant/Party Represented:

Melynda Cook

Defendant/Party Represented

Randall Porter

In re: Professional Investigation Serv.

CHARGES

OFFENSE/CHARGE/MATTER	ORC/CITY CODE	DEGREE	DISPOSITION
1.) Aqq. Murder	2903.01	F	Trial-G
2.)			
3.)			

List only the three most serious charges beginning with the one of greatest severity and continuing in descending order.

JUDGMENT ENTRY

The Court finds that the following experts and/or expenses were ordered for use in the case of an indigent person, that all rules and standards of the Ohio Public Defender Commission and State Public Defender have been met, and that an Affidavit of Indigency/Financial Disclosure Form for the above referenced person has been sent to the Office of the Ohio Public Defender, or is attached to this document.

IT IS THEREFORE ORDERED that the expert fees and/or expenses attached are hereby approved in the amount of $ 487.50. It is further ordered that the said amount is certified by the Court to the County Auditor for payment.

Nastoff
Judge's Name (type or print)

Judge's Signature

10/28/05
Date

COUNTY AUDITOR'S CERTIFICATION

The County Auditor in executing this certificate attests to the accuracy of the figures contained herein. A subsequent audit by the Ohio Public Defender Commission and/or Auditor of State that reveals unallowable or excessive costs may result in future adjustments against reimbursement or repayment of audit exceptions to the Ohio Public Defender.

PAYEE	TAX ID	WARRANT NO.	WARRANT DATE	AMOUNT
Thomas Hall P.I. Inc.	31-1631192			487.50

(If necessary, continue on separate sheet.)

TOTAL $487.50

County Number

County Auditor's Signature

OPD-209 (1/00)

37



Thomas Hall P.I. Inc.
1281 Grace Ave.
Cincinnati, OH 45208

Invoice

Number: **1282**

Date: **October 19, 2009**

Bill To:

Mrs. Melynda Cook-Reich, Esq.
Repper, Powers & Pagan
1501 First Ave.
Middletown, OH 45044

Ship To:

Terms	Customer #	Ship	Via	Project

Item #	Description	Quantity	Price Each	Amount
001	Professional Investigation Services	7.50	65.00	487.50

Von Clark Davis investigation.

Total $487.50

0 - 30 days	31 - 60 days	61 - 90 days	> 90 days	Total
$487.50	$0.00	$0.00	$0.00	$487.50

Case time billing worksheet

Client: Mr. Von Clark Davis Attorney: Ms. Melynda Cook-Reich, Mr. Randall Porter

Date	Start	Stop	Total	Case Notes
2/16/2008	10:45	11:15:00	0.5	Background on VC Davis case.
2/20/2008	16:45	19:15	2.5	Family Mtg. in Forest Park, OH.
8/22/2008	9:00	13:30	4.5	9 subpoenas (all same day, several out of county)

FILED

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

2008 AUG 21 PM 3:02

CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

STATE OF OHIO,		
Plaintiff,	:	**Case No. CR 1983-12-0614**
vs.	:	
VON CLARK DAVIS	:	**Judge Daniel Andrew Nastoff**
Defendant.	:	

ENTRY GRANTING DEFENDANT'S MOTION AND MEMORANDUM FOR THE APPROPRIATION OF FUNDS FOR A PRIVATE INVESTIGATOR

The Court having received a Motion through Defendant's Counsels for the Appropriation of Funds for a Private Investigator, hereby **GRANTS** said motion for Good Cause.

WHEREFORE, the Court grants the Defendant $ 1,000.00 for expenses for a Private Investigator in this matter. Such expert expenses to be billed at $65.00 per hour.

SO ORDERED,

JUDGE NASTOFF

Cc: Prosecutor

Entry prepared by Melynda Cook-Reich

Repper, Pagan, Cook, Ltd.
Attorneys at Law
1501 First Avenue
Middletown, OH 45044
Phone: 513.424.1823
FAX: 513.424.3135

FINANCIAL DISCLOSURE/AFFIDAVIT OF INDIGENCY

($25.00 application fee may be assessed—see notice on reverse side)

I. PERSONAL INFORMATION

Name/Applicant	Party Represented (if applicant, enter "same")	D.O.B.
Von Clark DAVIS		11-1-46

Mailing Address	City	State	ZIP
OSP - Youngstown Correctional	Youngstown	Oh	

Case No.	Phone	Message Phone (within 48 hours)
CR 1983-12-0614	( )	( )

II. OTHER PERSONS LIVING IN HOUSEHOLD

Name	D.O.B	Relationship	Name	D.O.B	Relationship
1)			3)		
2)			4)		

III. MONTHLY INCOME/EMPLOYMENT INFORMATION

Type of Income	Applicant	Spouse (or Parents if applicant is a juvenile)	Other Household Members	Total
Employment (Gross)				
Unemployment				
Worker's Comp.				
Pension/Social Security				
Child Support				
Works First/TANF				
Disability				
Other				

Employer's Name (for all household members)	A. TOTAL INCOME	$ 0
Employer's Address		Phone ( )

IV. ALLOWABLE EXPENSES

Type of Expense	Amount
Child Support Paid Out	
Child Care (if working only)	
Transportation for Work	
Insurance	
Medical/Dental	
Medical & Associated Costs Of Caring for Infirm Family Members	
B. EXPENSES	$ 0

V. TOTAL INCOME

Total Income – Allowable Expenses = Adjusted Total Income

A. TOTAL INCOME	$ 0
- B. EXPENSES	$ 0
C. ADJUSTED TOTAL INCOME	$ 0

VI. ASSET INFORMATION

Type of Asset	Describe / Length of Ownership / Make, Model, Year (where applicable)	Estimated Value
Real Estate / Home	Price:$ Date Purchased: Amt. Owed:$	
Stocks / Bonds / CD's		
Automobiles		
Trucks / Boats / Motorcycles		
Other Valuable Property		
Cash on Hand		
Money Owed to Applicant		
Other		
Checking Acct. (Bank / Acct. #)		
Savings/MM Acct. (Bank / Acct. #)		
D. TOTAL ASSETS		$ 0

VII. MONTHLY LIABILITIES/OTHER EXPENSES

Type of Liability	Amount
Rent / Mortgage	
Food	
Electric	
Gas	
Fuel	
Telephone	
Cable	
Water / Sewer / Trash	
Credit Cards	
Loans	
Taxes Owed	
Other	
E. LIABILITIES & OTHER EXPENSE	0

VIII. GRAND TOTALS

C. ADJ. TOTAL INCOME: 0

D. TOTAL ASSETS: 0

E. LIABILITIES & OTHER: 0

$25.00 APPLICATION FEE NOTICE

By submitting this Financial Disclosure Form/Affidavit of Indigency Form, you will be assessed a non-refundable $25.00 application fee unless waived or reduced by the court. If assessed, the fee is to be paid to the clerk of courts within seven (7) days of submitting this form to the court, the public defender, your appointed counsel or any other party who will make a determination regarding your indigency.

IX. AFFIDAVIT OF INDIGENCY

I, _____(affiant) being duly sworn, say:

1. I am financially unable to retain private counsel without substantial hardship to me or my family.
2. I understand that I must inform the public defender or appointed attorney if my financial situation should change before the disposition of the case(s) for which representation is being provided.
3. I understand that if it is determined by the county, or by the Court, that legal representation should not have been provided, I may be required to reimburse the county for the costs of representation provided. Any action filed by the county to collect legal fees hereunder must be brought within two years form the last date legal representation was provided.
4. I understand that I am subject to criminal charges for providing false financial information in connection with the above application for legal representation pursuant to Ohio Revised Code Sections 120.05 and 2921.13.
5. I hereby certify that the information I have provided on this financial disclosure form is true to the best of my knowledge.

X Von C Davis 12-6-07
Affiant's Signature Date

MELYNDA COOK Notary Public, State of Ohio My Commission Has No Expiration Date

Notary Public/Individual duly authorized to administer oath:

Subscribed and duly sworn before me according to law, by the above named applicant this 6th day of December, 2007, at Hamilton, County of Butler and State of Ohio.

Melynda Cook
Signature of person administering oath

Notary
Title

X. JUDGE CERTIFICATION

I hereby certify that above-noted applicant is unable to fill out and/or sign this financial disclosure/ affidavit for the following reason: _____.

I have determined that the applicant meets the criteria for receiving court appointed counsel.

_____
Judge's Signature Date

OPD-206R rev. 9/2005

MOTION, ENTRY, AND CERTIFICATION FOR APPOINTED COUNSEL FEES

In the Common Pleas Court of Butler County, Ohio

Plaintiff: State of Ohio

V.

Defendant / Party Represented: Von Clark Davis

In re:

Current Case No. CR1983-12-0614

Reference Case No. (if app.)

☐ Capital Offense Case *(check if this is a Capital Offense case)*

☐ Guardian Ad Litem *(check if appointed as GAL)*

Judge Nastoff

FILED 2010 JAN -8 AM 11:37 SANDY LEWIS BUTLER COUNTY CLERK OF COURTS

IMAGED

MOTION FOR APPROVAL OF PAYMENT OF APPOINTED COUNSEL FEES AND EXPENSES

The undersigned having been appointed counsel for the party represented moves this Court for an order approving payment of fees and expenses as indicated in the itemized statement herein. I certify that I have received no compensation in connection with providing representation in this case other than that described in this motion or which has been approved by the Court in a previous motion, nor have any fees and expenses in this motion been duplicated on any other motion. I, or an attorney under my supervision, have performed all legal services itemized in this motion.

☐ Periodic Billing *(check if this is a periodic bill)*

As attorney/guardian ad litem of record, I was appointed on December 5, 2007. This case terminated and/or was disposed of on September 21, 2009. I am submitting this application on October 15, 2009.

Name Melynda Cook-~~Roth~~ Signature Melynda Cook

Address 1501 First Ave., Middletown, OH, 45044 SSN/Tax ID 04-3699744

Address *City / State / Zip* OSC Reg. No. 0066596

SUMMARY OF CHARGES, HOURS, EXPENSES, AND BILLING

OFFENSE/CHARGE/MATTER	ORC/CITY CODE	DEGREE	DISPOSITION
1.) Aggravated Murder	2903.01	F	Trial-Guilty

**List only the three most serious charges beginning with the one of the greatest severity and continuing in descending order.*

Grand Total Hours From Other Side:

OUT-OF-COURT	IN-COURT			GRAND TOTAL
	PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
362.70	6.90	31.80	38.70	401.40

☐ Flat Fee Hrs:In 38.70 X Rate $50.00 = $1,935.00 Total Fees $16,443.00

☐ Min. Fee Hrs:Out 362.70 X Rate $40.00 = $14,508.00 Expenses $76.25 Total $16,519.25

JUDGMENT ENTRY

The Court finds that counsel performed the legal services set forth on the itemized statement on the reverse hereof, and that the fees and expenses set forth on this statement are reasonable, and are in accordance with the resolution of the Board of County Commissioners of Butler County, Ohio relating to payment of appointed counsel, that all rules and standards of the Ohio Public Defender Commission and State Public Defender have been met.

IT IS THEREFORE ORDERED that counsel fees and expenses be, and are hereby approved, in the amount of $16,519.25. It is further ordered that the said amount be, and hereby is, certified by the Court to the County Auditor for payment.

☐ *Extraordinary fees granted (copy of journal entry attached)*

Judge *Signature* 1/4/10 *Date*

CERTIFICATION

The County Auditor, in executing this certification, attests to the accuracy of the figures contained herein. A subsequent audit by the Ohio Public Defender Commission and/or Auditor of the State which reveals unallowable or excessive costs may result in future adjustments against reimbursement or repayment of audit exceptions to the Ohio Public Defender Commission.

County Number 9 Warrant Number Warrant Date

County Auditor

CASE NUMBER CR1 -12-0614 **ATTORNEY/C** Melynda Cook-Reich

IF CAPITAL OFFENSE CASE, LIST CO-COUNSEL'S NAME HERE:

ITEMIZED FEE STATEMENT

I hereby certify that the following time was expended in representation of the defendant/party represented:

DATE OF SERVICE	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
12/3/07	2.5	0.0	0.0	0.0	2.5
12/4/07	2.5	0.0	1.3	1.3	3.8
12/5/07	0.2	0.0	0.0	0.0	0.2
12/6/07	3.2	0.0	0.0	0.0	3.2
12/7/07	1.2	0.0	0.0	0.0	1.2
12/9/07	0.5	0.0	0.0	0.0	0.5
12/13/07	0.2	0.0	0.0	0.0	0.2
12/20/07	0.1	0.0	0.0	0.0	0.1
12/28/07	0.7	0.0	0.0	0.0	0.7
1/7/08	0.1	0.0	0.0	0.0	0.1
1/11/08	0.5	0.0	0.0	0.0	0.5
1/22/08	0.1	0.0	0.0	0.0	0.1
1/29/08	1.0	0.0	0.0	0.0	1.0
2/4/08	5.0	0.0	1.0	1.0	6.0
2/5/08	2.5	0.0	0.0	0.0	2.5
2/6/08	0.2	0.0	0.0	0.0	0.2
2/9/08	1.5	0.0	0.0	0.0	1.5
2/10/08	0.8	0.0	0.0	0.0	0.8
2/11/08	0.5	0.0	0.0	0.0	0.5
2/15/08	2.5	0.0	0.0	0.0	2.5
2/18/08	1.0	0.0	0.0	0.0	1.0

Continue at top of next column.

DATE OF SERVICE (continued)	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
2/19/08	1.0	0.0	0.0	0.0	1.0
2/20/08	5.0	0.0	0.0	0.0	5.0
2/23/08	0.1	0.0	0.0	0.0	0.1
2/24/08	1.5	0.0	0.0	0.0	1.5
2/25/08	0.9	0.0	0.0	0.0	0.9
2/27/08	0.5	0.0	0.0	0.0	0.5
3/4/08	1.5	0.0	0.0	0.0	1.5
3/5/08	4.5	0.0	0.0	0.0	4.5
3/6/08	1.8	1.5	0.0	1.5	3.3
3/11/08	0.2	0.0	0.0	0.0	0.2
3/17/08	10.5	0.0	0.0	0.0	10.5
3/18/08	2.5	1.0	0.0	1.0	3.5
3/19/08	2.5	0.0	0.0	0.0	2.5
3/20/08	2.5	0.0	0.0	0.0	2.5
3/24/08	0.2	0.0	0.0	0.0	0.2
3/27/08	3.5	0.0	0.0	0.0	3.5
4/2/08	0.4	0.0	0.0	0.0	0.4
4/3/08	1.7	0.0	0.0	0.0	1.7
4/7/08	0.5	0.0	0.0	0.0	0.5
4/8/08	1.1	0.0	0.0	0.0	1.1

Continued on a separate sheet

Time is to be reported in tenth of an hour (6 minute) increments.

I hereby certify that the following expenses were incurred:

Use the following categories for Type: *(1) Experts (2) Postage/Phone (3) Records/Reports (4) Transcripts (5) Travel (6) Other*

TYPE	PAYEE	AMOUNT
6	Salvation Army- Clothes for Defendant	$12.70
6	Kmart- Clothes for Defendant	$8.04
3	VCN Vital Records- Death Certificate	$32.75
6	Parking	$4.00
6	Parking	$6.00

Continued on a separate sheet

Clearly identify each expense and include a receipt for any expense over $1.00. See Section (P)(1)(c) for privileged information.

ATTORNEY Melynda [illegible]k-Reich **CASE NO.** CR1983-12-0614

ITEMIZED FEE STATEMENT CONTINUATION SHEET

DATE OF SERVICE	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
4/10/08	2.5	0.0	0.0	0.0	2.5
4/11/08	1.5	0.0	0.0	0.0	1.5
4/15/08	1.5	0.0	0.0	0.0	1.5
4/16/08	0.1	0.0	0.0	0.0	0.1
4/21/08	0.2	0.0	0.0	0.0	0.2
4/23/08	3.6	0.0	0.0	0.0	3.6
4/24/08	0.2	0.0	0.0	0.0	0.2
4/25/08	0.5	0.0	0.0	0.0	0.5
5/5/08	0.2	0.0	0.0	0.0	0.2
5/7/08	0.2	0.0	0.0	0.0	0.2
5/8/08	1.5	0.0	0.0	0.0	1.5
5/9/08	0.3	0.0	0.0	0.0	0.3
5/12/08	0.2	0.0	0.0	0.0	0.2
5/15/08	4.5	0.0	0.0	0.0	4.5
5/16/08	3.5	0.0	0.0	0.0	3.5
5/18/08	0.2	0.0	0.0	0.0	0.2
5/23/08	2.5	0.0	0.0	0.0	2.5
5/26/08	1.5	0.0	0.0	0.0	1.5
5/27/08	2.0	0.0	0.0	0.0	2.0
5/28/08	2.2	0.0	0.0	0.0	2.2
5/29/08	1.5	0.0	0.0	0.0	1.5
5/30/08	4.5	0.0	0.0	0.0	4.5
6/3/08	0.2	0.0	0.0	0.0	0.2
6/6/08	3.7	0.0	0.0	0.0	3.7
6/9/08	1.5	0.0	0.0	0.0	1.5
6/11/08	0.1	0.0	0.0	0.0	0.1
6/12/08	2.2	0.0	1.5	1.5	3.7
6/13/08	2.0	0.0	0.0	0.0	2.0
6/16/08	0.1	0.0	0.0	0.0	0.1
6/17/08	1.0	0.0	0.0	0.0	1.0
6/18/08	0.1	0.0	0.0	0.0	0.1
7/9/08	0.5	0.0	0.0	0.0	0.5

DATE OF SERVICE (continued)	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
7/11/08	1.0	0.0	0.0	0.0	1.0
7/22/08	0.1	0.0	0.0	0.0	0.1
7/23/08	0.1	0.0	0.0	0.0	0.1
7/28/08	1.0	0.0	0.0	0.0	1.0
7/30/08	0.1	0.0	0.0	0.0	0.1
7/31/08	0.1	0.0	0.0	0.0	0.1
8/7/08	0.1	0.0	0.0	0.0	0.1
8/8/08	0.1	0.0	0.0	0.0	0.1
8/12/08	0.1	0.0	0.0	0.0	0.1
8/18/08	0.5	0.0	0.0	0.0	0.5
8/22/08	4.6	0.0	0.0	0.0	4.6
8/25/08	3.0	0.0	0.0	0.0	3.0
8/26/08	5.8	0.0	0.0	0.0	5.8
8/27/08	7.9	0.0	3.0	3.0	10.9
8/28/08	6.8	0.0	1.8	1.8	8.6
9/4/08	0.1	0.0	0.0	0.0	0.1
9/8/08	1.5	0.0	0.0	0.0	1.5
9/16/08	0.5	0.0	0.0	0.0	0.5
9/22/08	0.5	0.0	0.0	0.0	0.5
9/24/08	0.2	0.0	0.0	0.0	0.2
9/25/08	6.5	0.0	0.0	0.0	6.5
9/27/08	0.2	0.0	0.0	0.0	0.2
10/3/08	0.5	0.0	0.0	0.0	0.5
10/7/08	0.3	0.0	0.0	0.0	0.3
10/8/08	0.2	0.0	0.0	0.0	0.2
10/10/08	2.0	0.0	0.0	0.0	2.0
10/14/08	0.1	0.0	0.0	0.0	0.1
10/15/08	0.6	0.0	0.0	0.0	0.6
10/16/08	0.1	0.0	0.0	0.0	0.1
10/22/08	2.0	0.0	0.0	0.0	2.0
10/31/08	1.5	0.0	0.0	0.0	1.5
Continued on a separate sheet					

OPD-1027R (1/00) ***Continue at top of next column.*** *Time is to be reported in tenth of an hour (6 minute) increments.*

ATTORNEY Melynda C '-Reich **CASE NO.** CR1983-12-0614

ITEMIZED FEE STATEMENT CONTINUATION SHEET

DATE OF SERVICE	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
11/3/08	10.2	0.0	0.0	0.0	10.2
11/6/08	0.5	0.0	0.0	0.0	0.5
11/7/08	2.5	0.0	0.0	0.0	2.5
11/10/08	0.2	0.0	0.0	0.0	0.2
11/19/08	1.5	0.0	0.0	0.0	1.5
11/20/08	0.5	0.0	0.0	0.0	0.5
11/24/08	2.5	0.0	2.0	2.0	4.5
12/10/08	1.5	0.0	0.0	0.0	1.5
12/11/08	1.5	0.0	0.0	0.0	1.5
12/15/08	0.1	0.0	0.0	0.0	0.1
12/28/08	0.1	0.0	0.0	0.0	0.1
1/2/09	1.0	0.0	0.0	0.0	1.0
2/25/09	0.2	0.0	0.0	0.0	0.2
2/26/09	0.2	0.0	0.0	0.0	0.2
3/2/09	0.2	0.0	0.0	0.0	0.2
3/5/09	0.1	0.0	0.0	0.0	0.1
3/16/09	1.0	0.0	0.0	0.0	1.0
3/18/09	0.2	0.0	0.0	0.0	0.2
3/19/09	1.0	0.0	0.0	0.0	1.0
3/23/09	1.5	0.0	0.0	0.0	1.5
3/24/09	1.0	0.0	0.0	0.0	1.0
3/25/09	0.3	0.0	0.0	0.0	0.3
3/26/09	1.5	0.0	0.0	0.0	1.5
3/27/09	0.2	0.0	0.0	0.0	0.2
4/1/09	0.3	0.0	0.0	0.0	0.3
4/6/09	1.0	0.0	0.0	0.0	1.0
4/7/09	2.0	0.0	0.0	0.0	2.0
4/8/09	3.0	1.6	0.0	1.6	4.6
4/14/09	0.5	0.0	0.0	0.0	0.5
4/15/09	0.5	0.0	0.0	0.0	0.5
4/16/09	0.2	0.0	0.0	0.0	0.2
4/17/09	4.0	0.0	0.0	0.0	4.0

DATE OF SERVICE (continued)	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
4/18/09	2.5	0.0	0.0	0.0	2.5
4/20/09	4.5	0.0	0.0	0.0	4.5
4/21/09	5.5	0.0	1.5	1.5	7.0
4/22/09	1.0	0.0	0.0	0.0	1.0
4/23/09	1.5	0.0	0.0	0.0	1.5
4/24/09	0.5	0.0	0.0	0.0	0.5
4/27/09	1.5	0.0	0.0	0.0	1.5
4/28/09	0.2	0.0	0.0	0.0	0.2
4/29/09	7.0	0.0	0.0	0.0	7.0
4/30/09	4.0	0.0	0.0	0.0	4.0
5/1/09	0.5	0.0	0.0	0.0	0.5
5/3/09	3.0	0.0	0.0	0.0	3.0
5/5/09	6.5	0.0	0.0	0.0	6.5
5/6/09	6.0	0.0	0.0	0.0	6.0
5/7/09	5.8	0.0	0.0	0.0	5.8
5/8/09	6.5	1.0	0.0	1.0	7.5
5/9/09	6.5	0.0	0.0	0.0	6.5
5/10/09	4.5	0.0	0.0	0.0	4.5
5/11/09	4.5	1.0	0.0	1.0	5.5
5/12/09	5.5	0.0	0.0	0.0	5.5
5/13/09	3.5	0.0	1.0	1.0	4.5
5/18/09	0.5	0.0	0.0	0.0	0.5
5/28/09	0.1	0.0	0.0	0.0	0.1
6/9/09	2.5	0.0	0.0	0.0	2.5
6/10/09	1.5	0.0	0.0	0.0	1.5
6/24/09	0.1	0.0	0.0	0.0	0.1
7/22/09	0.1	0.0	0.0	0.0	0.1
7/23/09	1.0	0.0	0.0	0.0	1.0
7/24/09	0.1	0.0	0.0	0.0	0.1
7/28/09	0.3	0.0	0.0	0.0	0.3
8/4/09	0.2	0.0	0.0	0.0	0.2

Continued on a separate sheet

OPD-1027R (1/00)

Continue at top of next column.

Time is to be reported in tenth of an hour (6 minute) increments.

ATTORNEY Melynda [illegible]-Reich **CASE NO.** CR1983-12-0614

ITEMIZED FEE STATEMENT CONTINUATION SHEET

DATE OF SERVICE	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	
8/5/09	1.6	0.0	0.0	0.0	1.6
8/7/09	1.5	0.0	0.0	0.0	1.5
8/17/09	0.5	0.0	0.0	0.0	0.5
8/20/09	0.9	0.0	0.0	0.0	0.9
8/25/09	7.5	0.0	0.0	0.0	7.5
8/26/09	0.3	0.0	0.0	0.0	0.3
8/28/09	0.5	0.0	0.0	0.0	0.5
8/31/09	4.5	0.0	0.0	0.0	4.5
9/1/09	0.5	0.0	0.0	0.0	0.5
9/3/09	2.7	0.8	0.0	0.8	3.5
9/5/09	7.5	0.0	0.0	0.0	7.5
9/6/09	7.5	0.0	0.0	0.0	7.5
9/7/09	8.0	0.0	0.0	0.0	8.0
9/8/09	11.0	0.0	3.5	3.5	14.5
9/9/09	10.5	0.0	7.0	7.0	17.5
9/10/09	5.5	0.0	8.2	8.2	13.7
10/12/09	0.2	0.0	0.0	0.0	0.2

DATE OF SERVICE (continued)	OUT-OF-COURT TOTAL	IN-COURT			DAILY TOTAL
		PRE-TRIAL HEARINGS	ALL OTHER IN-COURT	IN-COURT TOTAL	

EXPENSES - Continued

ATTORNEY/GAL: Melynda Cook-Reich

CASE NO.: CR1983-12-0614
State of Ohio v. Von Clark Davis

TYPE	PAYEE	AMOUNT
6	Gough Lamb-Clothes for Defendant	$12.76
	GRAND TOTAL	$76.25

SALVATION ARMY OD #3
4440 MARIE
MIDDLETOWN, OH 45044

BATCH: 764
S-A-L-E-S D-R-A-F-T
72109687
693400036921

REF: 0016
CD TYPE: MASTERCARD
TR TYPE: PURCHASE
DATE: SEP 02, 09 12:20:55

TOTAL $12.70

ACCT: 1829 EXP: **/**
AP: 016352
NAME: ANGELA POPP

CARDMEMBER ACKNOWLEDGES RECEIPT OF GOODS AND/OR SERVICES IN THE AMOUNT OF THE TOTAL SHOWN HEREON AND AGREES TO PERFORM THE OBLIGATIONS SET FORTH BY THE CARDMEMBER'S AGREEMENT WITH THE ISSUER

CUSTOMER COPY

SALVATION ARMY
4440 MARIE DRIVE
MIDDLETOWN, OHIO 45402

09/02/09 12:17PM #X
001302 #4252 CSHR 6

SHOES	T1$5.99
	-50.00%
50% DISC	T1-3.00
MEN PINK	T1$2.99
	-50.00%
50% DISC	T1-1.50
MEN YELLOW	T1$4.99
	-50.00%
50% DISC	T1-2.50
MEN PINK	T1$4.99
	-50.00%
50% DISC	T1-2.50
MEN GREEN	T1$4.99
	-50.00%
50% DISC	T1-2.50
MOSE ST	$11.95
TAX1	$0.75

CR CARD $12.70

kmart

BIG KMART STORE 3455
4601 ROOSEVELT BLVD
MIDDLETOWN, OH 45044
(513)422-4576

********** ALL SALES FINAL **********
****** NO REFUNDS OR EXCHANGES ******

CASHIER: BETSY
GENERAL MERCHANDISE

87903300338	BEM SOCKS	A	4.49 T
03160011512	KIWILTHRWXBR	A	3.08 T

**** TAX .47 BAL 8.04
XXXXXXXXXXXX1829
MC APPROVAL 073232
VF MC 8.04
CHANGE .00

TOTAL SAVED: 1.27

V06-0020831-1 VCN Vital Records 5/8/2009 @ 3:00 pm

Credit Card Authorization Code: 030219 / AVS Response: Y - Exact Match 5

Certificate Type: **DEATH**
Name on Certificate: **MILTON B FLOWERS**
Spouse's Name:
Event Date: **1/01/1995** Sex: **M**
Place of Death - City:
County:

Copies: **1**
Carrier: **UPS NEXT DAY AIR**
Daytime / Delivery Telephone: **(614)466-5394 / (800)686-1573**
Relationship: **PUB DEFENDER**
Request Fee this Item: **$ 12.00**
Other Agency Fees this Item: **$ 0.00**

VCN Fee	Carrier Fee	Agency Request Fee	Other Agency Fees	Total Fee
$ 6.75	$ 14.00	$ 12.00	$ 0.00	$ 32.75

Ship To: **MELYNDA COOK-REICH ATTY AT LAW**
1501 FIRST AVE
MIDDLETOWN, OH 45044

LOT: 6054 METER: 1

Ticket Expires:
10:52 AM Thu
2008 Sep 25

Ticket: 0000009407
Time: 08:52 AM Thu
Date: 2008 Sep 25
Price: $4.00
Cash: $5.00
Change: $1.00

DISPLAY FACE
UP ON DASH

Charges are for use of parking space only. This company is not responsible for loss or damage to vehicle or contents.

Columbus



FILED BUTLER CO.
COURT OF COMMON PLEAS
MAY - 8 2008
CINDY CARPENTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	**CASE No. CR 1982 12-0614**
-vs-	:	
VON CLARK DAVIS	:	**Judge Nastoff**
Defendant	:	

JOURNAL ENTRY

On motion of Von Clark Davis and for good cause shown, it is hereby ORDERED that the motion for appointment of counsel is GRANTED. The Court ORDERS Assistant State Public Defender Randall L. Porter and Attorney Melynda Cook-Reich are hereby appointed for purposes of appeal.

JUDGE NASTOFF

Dated: 4/30/08

VII. MONTHLY LIABILITIES/OTHER EXPENSES

Type of Liability	Amount
Rent / Mortgage	
Food	
Electric	
Gas	
Fuel	
Telephone	
Cable	
Water / Sewer / Trash	
Credit Cards	
Loans	
Taxes Owed	
Other	
E. LIABILITIES & OTHER EXPENSE	0

VIII. GRAND TOTALS

C. ADJ. TOTAL INCOME: 0

D. TOTAL ASSETS: 0

E. LIABILITIES & OTHER: 0

$25.00 APPLICATION FEE NOTICE

By submitting this Financial Disclosure Form/Affidavit of Indigency Form, you will be assessed a non-refundable $25.00 application fee unless waived or reduced by the court. If assessed, the fee is to be paid to the clerk of courts within seven (7) days of submitting this form to the court, the public defender, your appointed counsel or any other party who will make a determination regarding your indigency.

IX. AFFIDAVIT OF INDIGENCY

I, _____(affiant) being duly sworn, say:

1. I am financially unable to retain private counsel without substantial hardship to me or my family.
2. I understand that I must inform the public defender or appointed attorney if my financial situation should change before the disposition of the case(s) for which representation is being provided.
3. I understand that if it is determined by the county, or by the Court, that legal representation should not have been provided, I may be required to reimburse the county for the costs of representation provided. Any action filed by the county to collect legal fees hereunder must be brought within two years form the last date legal representation was provided.
4. I understand that I am subject to criminal charges for providing false financial information in connection with the above application for legal representation pursuant to Ohio Revised Code Sections 120.05 and 2921.13.
5. I hereby certify that the information I have provided on this financial disclosure form is true to the best of my knowledge.

X Von C Davis 12-6-07
Affiant's Signature Date

MELYNDA COOK Notary Public, State of Ohio My Commission Has No Expiration Date

Notary Public/Individual duly authorized to administer oath:
Subscribed and duly sworn before me according to law, by the above named applicant this 6th day of December, 2007, at Hamilton, County of Butler and State of Ohio.

Melynda Cook Notary
Signature of person administering oath Title

X. JUDGE CERTIFICATION

I hereby certify that above-noted applicant is unable to fill out and/or sign this financial disclosure/ affidavit for the following reason: _____.

I have determined that the applicant meets the criteria for receiving court appointed counsel.

_____
Judge's Signature Date

OPD-206R rev. 9/2005

FINANCIAL DISCLOSURE/AFFIDAVIT OF INDIGENCY

($25.00 application fee may be assessed—see notice on reverse side)

I. PERSONAL INFORMATION

Name/Applicant	Party Represented (if applicant, enter "same")	D.O.B.
Von Clark DAVIS		11-1-46

Mailing Address	City	State	ZIP
OSP - Youngstown Correctional	Youngstown	Oh	

Case No.	Phone	Message Phone (within 48 hours)
CR 1983-12-0614	( )	( )

II. OTHER PERSONS LIVING IN HOUSEHOLD

Name	D.O.B	Relationship	Name	D.O.B	Relationship
1)			3)		
2)			4)		

III. MONTHLY INCOME/EMPLOYMENT INFORMATION

Type of Income	Applicant	Spouse (or Parents if applicant is a juvenile)	Other Household Members	Total
Employment (Gross)	0			
Unemployment				
Worker's Comp.				
Pension/Social Security				
Child Support				
Works First/TANF				
Disability				
Other				

Employer's Name (for all household members)	A. TOTAL INCOME	$ 0
Employer's Address		Phone ( )

IV. ALLOWABLE EXPENSES

Type of Expense	Amount
Child Support Paid Out	
Child Care (if working only)	
Transportation for Work	
Insurance	
Medical/Dental	
Medical & Associated Costs Of Caring for Infirm Family Members	0
B. EXPENSES	$ 0

V. TOTAL INCOME

Total Income – Allowable Expenses = Adjusted Total Income

A. TOTAL INCOME	$ 0
- B. EXPENSES	$ 0
C. ADJUSTED TOTAL INCOME	$ 0

VI. ASSET INFORMATION

Type of Asset	Describe / Length of Ownership / Make, Model, Year (where applicable)	Estimated Value
Real Estate / Home	Price:$ Date Purchased: Amt. Owed:$	
Stocks / Bonds / CD's		0
Automobiles		
Trucks / Boats / Motorcycles		
Other Valuable Property		
Cash on Hand		
Money Owed to Applicant		
Other		
Checking Acct. (Bank / Acct. #)		
Savings/MM Acct. (Bank / Acct. #)		
D. TOTAL ASSETS		$ 0

JJ

IMAGED

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO, :

Appellee, : **Case No. CR 1982 12-0614**

FILED BUTLER CO.
COURT OF COMMON PLEAS
JAN 26 2010
CINDY CARPENTER
CLERK OF COURTS

vs.

VON CLARK DAVIS, **Judge Daniel Andrew Nastoff**

Appellant. :

DEFENDANT'S MOTION FOR APPOINTMENT AND MOTION TO ALLOW APPEARANCE PRO HAC VICE

Defendant-Appellant Von Clark Davis, by and through counsel, requests the Court to appoint Laurence Komp (Rule 20 Appellate Qualified), Alan Freedman (to appear *pro hac vice* and then will be declared Rule 20 Qualified), and John Parker (Rule 20 Trial and Appellate Qualified), and to represent him on his appeal. Mr. Freedman has been informed by the Rule 20 Committee that he will be certified once appointed. Attachment A. This motion is prompted by Mr. Davis and his family, who reached out to Mr. Freedman regarding representing Mr. Davis on appeal. Mr. Komp confirmed that in a face to face meeting with Mr. Davis.

Further, the motion seeks formalized appointment to allow counsel to receive some compensation during their representation of Mr. Davis during this appeal. Mr. Freedman will not request compensation for his work on the case. Denial of this motion will not cause counsel to abandon their client, they still have an attorney client relationship and obligation they will fulfill.

Laurence Komp is Rule 20 Appellate Qualified, maintains an active Ohio license, and is in good standing. Attachment B. Mr. Komp has extensive appellate capital practice in both state

319

and federal court in Ohio. *See Moore v. Mitchell*, 531 F.Supp.2d 845 (S.D. Ohio 2008), *Morales v. Mitchell*, 507 F.3d 916 (6th Cir. 2007), *Bradshaw v. Stumpf*, 545 U.S. 175 (2005), *Davis v. Coyle*, 475 F.3d 761 (6th Cir. 2007), *Davis v. Mitchell*, 318 F.3d 682 (6th Cir. 2003). He has argued in the Twelfth Appellate District in capital post-conviction cases (*see State v. Loza*, 1997 Ohio App. LEXIS 4574 (Ohio Ct. App., Butler County Oct. 13, 1997)) and argued to the Ohio Supreme Court in a direct appeal of right in a capital case. *State v. Scudder*, 643 N.E.2d 524 (Ohio 1994). This Court recognized that Attorney Komp had "a long history of representing Mr. Davis," and correctly assumed a long-standing relationship and developed rapport with Mr. Davis. 12/3/07 Pretrial p. 4.[1]

Alan Freedman has been informed by the Rule 20 Committee that he will declared qualified once appointed on a *pro hac vice* basis to represent Mr. Davis. Attachment A. Mr. Freedman has the requisite appellate capital practice in federal court in Ohio. *See Davis v. Coyle*, 475 F.3d 761 (6th Cir. 2007), *Bradshaw v. Stumpf*, 545 U.S. 175 (2005). Mr. Freedman has extensive capital appellate experience outside of Ohio. *See e.g. Corcoran v. Levenhagen*, 2009 US LEXIS 7479 (2009), *Allen v. Buss*, 558 F.3d 657 (7th Cir. 2009), *Smith v. State*, 877 So. 2d 369 (Miss. 2004), *Wright v. Walls*, 288 F.3d 937 (7th Cir. 2002), *Roche v. Davis*, 291 F.3d 473 (7th Cir. 2002), *People v. Hattery*, 109 Ill.2d 449 (1985). It is the basis of this experience that the Rule 20 Committee accepted his qualifications pending this Court's appointment on a *pro hac vice* basis. Attachment A.

Further, as Mr. Komp, Mr. Freedman has a long-standing relationship with Mr. Davis. On the basis of this experience and this previous relationship, Mr. Freedman should be permitted to be admitted *pro hac vice* to represent Mr. Davis in his capital appeal.

[1] In an abundance of caution and because Attorney Komp was not Rule 20 trial qualified, the Court denied his appointment as trial counsel. 12/3/07 Pretrial p. 12.

John Parker is Rule 20 Trial and Appellate Qualified, maintains an active Ohio license, is in good standing and maintains his law office in Ohio. Mr. Parker has extensive trial and appellate capital practice in both state and federal court. *See State v. Andre Curlee*, CR 417798, Cuyahoga County (acquitted of all charges); *State v. Jeffrey Braun, CR 496324*, Cuyahoga County (defendant sentenced to LWOP); *State v. Aaron Gipson*, Erie County Case No 2008 CR 266 (Case pending trial after Death Specifications Dismissed by State); *State v. Anthony Sowell*, Cuyahoga County, Case No. CR 530885 (twenty two counts of capital Aggravated Murder, case pending); *State v. Vernon Brown*, 115 Ohio St.3d 55 (death penalty vacated and remanded for new trial); *State v. Charles Maxwell*, Case No. 2007-0755 (pending direct appeal in the Supreme Court of Ohio); *Davis v. Mitchell*, 318 F.3d 682 (6th Cir. 2003); two pending federal habeas petitions in U.S.D.C. N.D. Ohio, *Jackson v. Houk*, 07 CV 00880 and *Brinkley v. Houk*, 06 CV 00110. Not only is Mr. Parker qualified, his appointment will satisfy Rule 20, Part II, Sec. (B)(1).

Mr. Komp and Mr. Freedman previously represented Mr. Davis in his federal proceedings which culminated in the third sentencing hearing. Mr. Davis desires that the previous attorney client relationship be recommenced for the purposes of this appeal. . Appellant and Appellant's family contacted his previous counsel, counsel did not solicit this representation. Mr. Freedman seeks appointment but will not request payment.

WHEREFORE, Mr. Davis respectfully requests the Court to put on an entry appointing Attorneys Freedman, Komp and Parker as his attorneys for the direct appeal to the Twelfth Appellate District.

Respectfully submitted,

/s/ Laurence E. Komp
Laurence E. Komp (0060142)
Attorney at Law
P.O. Box 1785
Manchester, Missouri 63011
636-207-7330 (Voice)
636-207-7351 (Facsimile)
lekomp@swbell.et

COUNSEL FOR VON CLARK DAVIS

CERTIFICATE OF SERVICE

I certify a copy of the foregoing DEFENDANT'S MOTION FOR APPOINTMENT AND MOTION TO ALLOW APPEARANCE PRO HAC VICE was mailed regular U.S. Mail to Daniel Eichel and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorneys at the Government Services Center, 315 High Street, Hamilton, Ohio 45011 on this the 26th day of January, 2010

/s/ Laurence E. Komp
Laurence E. Komp
COUNSEL FOR VON CLARK DAVIS

The Supreme Court of Ohio

OFFICE OF ATTORNEY SERVICES
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
THOMAS J. MOYER

JUSTICES
PAUL E. PFEIFER
EVELYN LUNDBERG STRATTON
MAUREEN O'CONNOR
TERRENCE O'DONNELL
JUDITH ANN LANZINGER
ROBERT R. CUPP

DIRECTOR
SUSAN B. CHRISTOFF

TELEPHONE 614.387.9327
FACSIMILE 614.387.9329
www.supremecourt.ohio.gov

December 14, 2009

Alan M. Freedman
Midwest Center for Justice, LTD
831 Main Street
Evanston, IL 60202

Re: Application for Certification for Appointment as Counsel for Indigent Defendants in Capital Cases

Dear Mr. Freedman:

The Rule 20 Commission has reviewed your application requesting Rule 20 appellate certification in order to allow you to represent defendant-appellant Von Clark Davis in Butler App. No. CA 209-10-263.

The Commission needs additional information, until which it cannot approve your application. Your application will be approved, however, upon your submitting a copy of the judicial order(s) which demonstrate:

1. You have been appointed to represent Mr. Davis pro hac vice in this case. See Rule 20 Part II, Sec. B(2)(a).

2. The name of your appointed co-counsel, so that the Commission can verify that co-counsel is an attorney who is Rule 20 certified and who also maintains a law office in the State of Ohio. See Rule 20, Part II, Sec. (B)(1).

The copy of the judicial order(s) need not be certified. Please feel free to fax them to me at 614-387-9329, or mail them to me electronically, tammy.white@sc.ohio.gov.

"A"

Upon satisfaction of the above, and consistent with your pro hac vice status, you will be certified for this case only. Future applications for certification will be considered on a case-by-case basis.

If you have any questions, please do not hesitate to contact me at 614.387.9330.

Sincerely,

Tammy White
Secretary to the Rule 20 Committee

/tw

VLK 1/25/10

The Supreme Court of Ohio

OFFICE OF ATTORNEY SERVICES
65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
THOMAS J. MOYER

JUSTICES
PAUL E. PFEIFER
EVELYN LUNDBERG STRATTON
MAUREEN O'CONNOR
TERRENCE O'DONNELL
JUDITH ANN LANZINGER
ROBERT R. CUPP

DIRECTOR
SUSAN B. CHRISTOFF

TELEPHONE 614.387.9330
FACSIMILE 614.387.9329
www.supremecourtofohio.gov

January 19, 2010

Laurence E. Komp
P.O. Box 1785
Manchester, MO 63011

RE: Application for Certification for Appointment as Counsel for Indigent Defendants in Capital Cases

Dear Mr. Komp:

The Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases ("Rule 20 Committee") considered your application for certification as Appellate Counsel.

The Rule 20 Committee has certified you to accept appointments in capital cases as **Appellate Counsel**.

You may use this letter as verification of your certification. Your certification is also reflected on the online "Statewide List of Rule 20 Certified Attorneys" at www.sconet.state.oh.us/Atty-Svcs/Rule20/R20_AttorneySearch.asp.

Rule 20 continuing education standards require all certified attorneys to obtain 12 hours of specialized training in the defense of capital cases every two years to maintain their certification. An attorney's certification shall be revoked for failure to complete the specialized training requirement.

If you have any questions regarding Rule 20, please contact me at 614-387-9330 or email me at tammy.white@sc.ohio.gov.

Sincerely,

Tammy White

Tammy White
Secretary to the Committee

"B"

Laurence E. Komp
Attorney at Law
P.O. Box 1785
Manchester, MO 63011
(636) 207-7330
Fax Number (636) 207-7351
Email - lekomp@swbell.net

FAX TRANSMITTAL FORM

To: Clerk of Court, Butler County Common Pleas
Name:
CC:
Phone:
Fax: 513-887-3966

From: Larry Komp
Date Sent: 1/26/10

Number of Pages: 8

Clerk of Court,

Attached please find a motion for extension of time. The required rule information is as follows:

(1) The name of the Court - **Butler County Common Pleas**;
(2) The caption of the case - **State of Ohio**
(3) The case number - **Case No. CR 1982 12-0614**
(4) The assigned judge - **Judge Daniel Andrew Nastoff**;
(5) The name, address, telephone number, fax number, Supreme Court registration number and e-mail address of the attorney submitting the facsimile filing - **Laurence Komp, P.O. Box 1785, Manchester, MO., 63011, (636)207-7330, (fax) (636)207-7351, Ohio Bar 0060142, lekomp@swbell.net**
(6) A description of the document being filed - **Defendant's Motion for Appointment and Motion to Allow Appearance Pro Hac Vice**
(7) The date of transmission - **1/26/10**
(8) The transmitting fax number - **(636) 207-7351**
(9) The number of pages transmitted, including the cover page - **Eight (8).**

If I can be of further assistance, do not hesitate to contact me.

CONFIDENTIALITY NOTICE: THIS FACSIMILE IS A CONFIDENTIAL COMMUNICATION FROM LAURENCE E. KOMP ATTORNEY AT LAW AND MAY BE SUBJECT TO ATTORNEY-CLIENT PRIVILEGE. The information contained in this communication, and any attachments thereto, is privileged and confidential and intended solely for use by the addressee(s). Any other use, dissemination, or copying of this facsimile communication is strictly prohibited and is a tortious interference with our confidential business relationships. If this was erroneously sent to you, please notify us immediately at (636) 207-7330 and permanently delete the original or any printed copies of this communication.

IMAGED

REQUEST FOR COURT PAID EXPERTS AND/OR EXPENSES

FILED
JAN 27 PM 2:05
BUTLER COUNTY
CLERK OF COURTS

In the Common Pleas Court of Butler County, Ohio.

Plaintiff: State of Ohio

Case No. CR1983-12-0614

v. Von Clark Davis

Defendant/Party Represented

Attorney(s) for the Defendant/Party Represented: Melynda Cook

In re: COURT APPOINTED EXPERT — Randall Porter

CHARGES

OFFENSE/CHARGE/MATTER	ORC/CITY CODE	DEGREE	DISPOSITION
1.) Agg. Murder	2903.01	F	Trial-G
2.)			
3.)			

*List only the three most serious charges beginning with the one of greatest severity and continuing in descending order.

JUDGMENT ENTRY

The Court finds that the following experts and/or expenses were ordered for use in the case of an indigent person, that all rules and standards of the Ohio Public Defender Commission and State Public Defender have been met, and that an Affidavit of Indigency/Financial Disclosure Form for the above referenced person has been sent to the Office of the Ohio Public Defender, or is attached to this document.

IT IS THEREFORE ORDERED that the expert fees and/or expenses attached are hereby approved in the amount of $17,862.00. It is further ordered that the said amount is certified by the Court to the County Auditor for payment.

Nastoff — Judge's Name (type or print)

Judge's Signature — 1/5/10 — Date

COUNTY AUDITOR'S CERTIFICATION

The County Auditor in executing this certificate attests to the accuracy of the figures contained herein. A subsequent audit by the Ohio Public Defender Commission and/or Auditor of State that reveals unallowable or excessive costs may result in future adjustments against reimbursement or repayment of audit exceptions to the Ohio Public Defender.

PAYEE	TAX ID	WARRANT NO.	WARRANT DATE	AMOUNT
Alliance Physicians, Inc.	311175717			4,383.84
Dr. Robert Smith	272-44-1935			~~15,446.47~~ 13,478.16

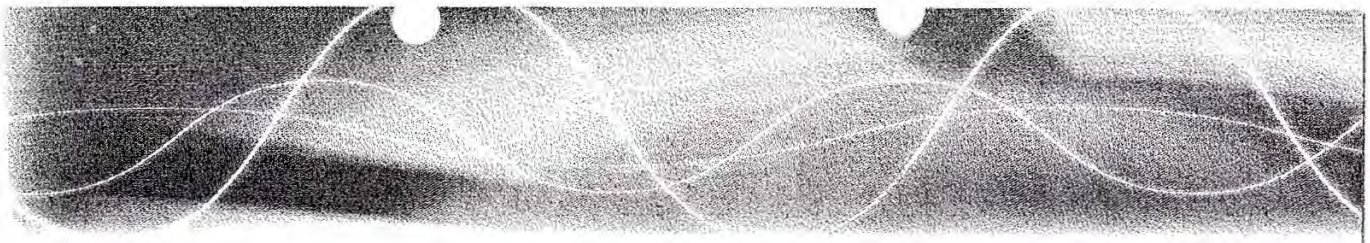
(If necessary, continue on separate sheet.)

TOTAL ~~19,830.31~~ 17,862.00

County Number _____

County Auditor's Signature

OPD-209 (1/00)



For Life.
The Wallace-Kettering Neuroscience Institute
Kettering Health Network℠

October 27, 2008

Mr. Randall Porter, J.D.
8 E. Long Street
Suite 1100
Columbus, Ohio 43215

Re: *State of Ohio v. Von Clark Davis*,
Invoice for professional services

Po # 248930

Mr. Porter:

At the request of defense counsel and though court appointment, I conducted a neuropsychological evaluation of Mr. Von Clark Davis on 10/16-17/2008. A summary of charges to date pertaining to this service appears below.

Date	Item	Time (hr.)	Charge
9-1-2008	Record Review	1.5	$405.00
9-2-2008	Record Review	1.5	$405.00
10-16-2008	Travel to/from Butler County Jail	1.5	$405.00
10-16-2008	Mileage (76 miles @ .42 cents/mile)		$31.92
10-16-2008	Clinical Interview, Neuropsychological Evaluation	5.5	$1485.00
10-17-2008	Travel to/from Butler County Jail	1.5	$405.00
10-17-2008	Mileage (76 miles @ .42 cents/mile)		$31.92
10-17-2008	Clinical Interview, Neuropsychological Evaluation	3.0	$810.00
10-17-2008	Scoring of Protocols/Interpretation	1.0	$270.00
10-23-2008	Conference Call	.5	$135.00
			$4383.84

3533 Southern Boulevard
Suite 5200
Kettering, Ohio 45429
937-395-8002
www.wkni.org

PEN-847 R10/07 (2,000)

The balance can be remitted to "Alliance Physicians, Inc." and sent to the attention of Jan Hartley, The Wallace-Kettering Neuroscience Institute, 3533 Southern Boulevard, Suite 5200, Kettering, Ohio, 45429.

Sincerely,

Nicholas A. Doninger, Ph.D., ABPP-CN

[redacted]

Cc: Dorian Hall

FILED BUTLER CO.
COURT OF COMMON PLEAS
APR 03 2008
CINDY CARPENTER
CLERK OF COURTS

*** Filed Under Seal ***

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	**Case No. CR 1983-12-0614**
vs.	:	
VON CLARK DAVIS	:	**Judge Daniel Andrew Nastoff**
Defendant.	:	

ENTRY UNDER SEAL

ENTRY GRANTING DEFENDANT'S MOTION AND MEMORANDUM FOR THE APPROPRIATION OF FUNDS FOR A NEUROPSYCHOLOGIST

The Court having received a Motion through Defendant's Counsels for the Appropriation of Funds for Mental Health specialist, specifically Dr. Nicholas A. Doninger, Ph.D., a Clinical Neuropsychologist, and after having held an Ex Parte Hearing on such motion on March 18, 2008, the Court hereby finds that the Defense has made a prima facie showing for the necessity for such expert and finds that such expert is reasonable and necessary for the investigation and preparation to the Defendant for the Mitigation Trial in this case. Therefore, for Good Cause Shown, the Court hereby **GRANTS** said motion.

WHEREFORE, the Court grants the Defendant up to $ 8,100.00 for expert services for Dr. Doninger in this matter to be billed at an hourly rate of $270 for out of court time.

epper, Pagan,
ook, Ltd.
torneys at Law
01 First Avenue
ddletown, OH 45044
one: 513.424.1823
X: 513.424.3135

The Court further finds that in the event testimony is deemed needed, that the Defense may request additional funds for such services as needed.

SO ORDERED,

JUDGE NASTOFF

Entry prepared by Melynda Cook-Reich

Kepper, Pagan, Cook, Ltd.
Attorneys at Law
501 First Avenue
Middletown, OH 45044
Phone: 513.424.1823
FAX: 513.424.3135

Robert L. Smith, Ph.D.
Clinical Psychologist / Addiction Specialist

INVOICE NO. 001840

To: Randall Porter
Office of the Ohio Public Defender
250 E. Broad St., Suite 1400
Columbus, Ohio 43215

From: Dr. Robert L. Smith

Date: March 26, 2009

RE: Von Clark Davis

Amount Due: $2,375.00

Date	Activity	Hours
03/10/2009	Review of Records	1.0
03/20/2009	Phone Conference with Attorneys	1.0
03/23/2009	Travel to Ohio State Penitentiary	1.5
	Diagnostic Interview – Von Clark Davis	4.0
	Substance Abuse Screens	0.5
	Travel to Westlake, Ohio	1.5

9.5 Hours @ $250.00 = $2,375.00

Please Make Payment To: Dr. Robert L. Smith
31470 St. Andrews
Westlake, Ohio 44145

COPY

[redacted]

20525 Center Ridge Road, Suite 370 Rocky River, Ohio 44116
(440) 333.3706 Fax (440) 892.1513 RLS61976@aol.com

Robert L. Smith, Ph.D.
Clinical Psychologist / Addiction Specialist

INVOICE NO. 001852

To:	Randall Porter Office of the Ohio Public Defender 250 E. Broad St., Suite 1400 Columbus, Ohio 43215
From:	Dr. Robert L. Smith
Date:	April 20, 2009
RE:	Von Clark Davis
Amount Due:	$1,750.00

Date	Activity	Hours
04/07/2009	Travel to Ohio State Penitentiary	1.5
	Diagnostic Interview – Von Clark Davis	4.0
	Travel to Westlake, Ohio	1.5

7 Hours @ $250.00 = $1,750.00

Please Make Payment To:

Dr. Robert L. Smith
31470 St. Andrews
Westlake, Ohio 44145
[redacted]

COPY

20525 Center Ridge Road, Suite 370 Rocky River, Ohio 44116
(440) 333.3706 Fax (440) 892.1513 RLS61976@aol.com

Robert L. Smith, Ph.D.
Clinical Psychologist / Addiction Specialist

Invoice No. 5598

Invoice

To: Randall Porter
Office of the Ohio Public Defender
250 E. Broad St., Suite 1400
Columbus, Ohio 43215

From: Dr. Robert L. Smith

Date: May 28, 2009

RE: Von Clark Davis

Amount Due: $7,084.23

Date	Activity	Hours
04/28/2009	Review of Records	4.0
05/01/2009	Review of Records	4.0
05/02/2009	Travel to Hamilton, Ohio	4.0
05/03/2009	Interview of Patrick Rotundo	1.0
	Interview of Elliot Davis	1.0
	Interview of Charles Tipton	2.5
	Interview of Alluster Tipton	1.0
	Interview of Carol Smith	1.0
	Interview of Victor Davis	1.0
05/04/2009	Meeting with Attorneys	3.0
	Travel to Cleveland, Ohio	4.0
05/10/2009	Power Point Presentation	1.0

27.5 Hours @ $250.00 = $6,875.00
Holiday Inn = $209.23
Total = $7,084.23

COPY

Please Make Payment To: Dr. Robert L. Smith
31470 St. Andrews
Westlake, Ohio 44145

20525 Center Ridge Road, Suite 370 Rocky River, Ohio 44116
(440) 333.3706 Fax (440) 892.1513 RLS61976@aol.com

Robert L. Smith, Ph.D.
Clinical Psychologist / Addiction Specialist

INVOICE NO. 074916

To:	Randal Porter Office of the Ohio Public Defender 250 E. Broad Street Suite 1400 Columbus, Ohio 43215
From:	Dr. Robert L. Smith Tax ID 272-44-1935
Date:	September 15, 2009
RE:	Von Clark Davis
Amount Due:	**$4,237.24**

Date	Activity	Hours
09/03/2009	Phone Conference with Dorian Hall	0.5
09/04/2009	Review & Finalization of PowerPoint Presentation	1.0
09/05/2009	Review of Documents	1.5
09/07/2009	Review of Documents	0.5
09/09/2009	Travel to Hamilton, Ohio	4.0
	Meeting with Attorneys	1.0
09/10/2009	Court Time and Testimony	4.0
	Travel to Westlake, Ohio	4.0

16.5 Hours @ 250.00 = $4,125.00
Courtyard Marriott = $112.24
Total = $4,237.24

Please Make Payment To:
Dr. Robert L. Smith
31470 St. Andrews
Westlake, Ohio 44145

20525 Center Ridge Road, Suite 370 Rocky River, Ohio 44116
(440) 333.3706 Fax (440) 892.1513 RLS61976@aol.com

COURTYARD Marriott

Courtyard by Marriott
Hamilton

1 Riverfront Plaza
Hamilton, Oh 45011
T 513.896.6200

R. Smith

Room: 430
Room Type: GENR
Number of Guests: 1
Rate: $99.99
Clerk:

Arrive: 09Sep09 Time: 06:36PM Depart: 10Sep09 Time: Folio Number: 7962

Date	Description	Charges	Credits
09Sep09	Room Charge	99.99	
09Sep09	Occupancy Sales Tax	6.00	
09Sep09	Sales Tax Other Room Tax	6.25	
10Sep09	Master Card		112.24
	Card #: MCXXXXXXXXXXXX0704/XXXX		
	Amount: 112.24 Auth: 78105Z Signature on File		
	This card was electronically swiped on 09Sep09		
	Balance:	**0.00**	

Marriott Rewards Account # XXXXX7432. Your Marriott Rewards points/miles earned on your room rate will be credited to your account. For account activity: 801-468-4000 or MarriottRewards.com.

Get all your hotel bills by email by updating your Marriott Rewards Preferences. Or, ask the Front Desk to email your bill for this stay. See "Internet Privacy Statement" on Marriott.com.

FINANCIAL DISCLOSURE/AFFIDAVIT OF INDIGENCY

($25.00 application fee may be assessed—see notice on reverse side)

I. PERSONAL INFORMATION

ame/Applicant	Party Represented (if applicant, enter "same")	D.O.B.
Von Clark DAVIS		11-1-46

ailing Address	City	State	ZIP
SP - Youngstown Correctional	Youngstown	Oh	

ase No.	Phone	Message Phone (within 48 hours)
CR 1983-12-0614	( )	( )

II. OTHER PERSONS LIVING IN HOUSEHOLD

ame	D.O.B	Relationship	Name	D.O.B	Relationship
			3)		
			4)		

III. MONTHLY INCOME/EMPLOYMENT INFORMATION

pe of Income	Applicant	Spouse (or Parents if applicant is a juvenile)	Other Household Members	Total
ployment (Gross)				
employment				
rker's Comp.				
sion/Social Security				
d Support				
ks First/TANF				
bility				
er				

loyer's Name (for all household members)	A. TOTAL INCOME	$ 0
loyer's Address		Phone ( )

IV. ALLOWABLE EXPENSES

of Expense	Amount
Support Paid Out	
Care (if working only)	
portation for Work	
ance	
al/Dental	
al & Associated Costs ning for Infirm Family bers	
KPENSES	$ 0

V. TOTAL INCOME

Total Income – Allowable Expenses = Adjusted Total Income

A. TOTAL INCOME	$ 0
B. EXPENSES	$ 0
C. ADJUSTED TOTAL INCOME	$ 0

VI. ASSET INFORMATION

of Asset	Describe / Length of Ownership / Make, Model, Year (where applicable)	Estimated Value
state / Home	Price:$ Date Purchased: Amt. Owed:$	
/ Bonds / CD's		
obiles		
/ Boats / Motorcycles		
aluable Property		
n Hand		
Owed to Applicant		
g Acct. (Bank / Acct #)		
MM Acct. (Bank / Acct #)		
	D. TOTAL ASSETS	$ 0

VII. MONTHLY LIABILITIES/OTHER EXPENSES

Type of Liability	Amount
Rent / Mortgage	
Food	
Electric	
Gas	
Fuel	
Telephone	
Cable	
Water / Sewer / Trash	
Credit Cards	
Loans	
Taxes Owed	
Other	
E. LIABILITIES & OTHER EXPENSE	0

VIII. GRAND TOTALS

C. ADJ. TOTAL INCOME: 0

D. TOTAL ASSETS: 0

E. LIABILITIES & OTHER: 0

$25.00 APPLICATION FEE NOTICE

By submitting this Financial Disclosure Form/Affidavit of Indigency Form, you will be assessed a non-refundable $25.00 application fee unless waived or reduced by the court. If assessed, the fee is to be paid to the clerk of courts within seven (7) days of submitting this form to the court, the public defender, your appointed counsel or any other party who will make a determination regarding your indigency.

IX. AFFIDAVIT OF INDIGENCY

I, _____ (affiant) being duly sworn, say:

1. I am financially unable to retain private counsel without substantial hardship to me or my family.
2. I understand that I must inform the public defender or appointed attorney if my financial situation should change before the disposition of the case(s) for which representation is being provided.
3. I understand that if it is determined by the county, or by the Court, that legal representation should not have been provided, I may be required to reimburse the county for the costs of representation provided. Any action filed by the county to collect legal fees hereunder must be brought within two years form the last date legal representation was provided.
4. I understand that I am subject to criminal charges for providing false financial information in connection with the above application for legal representation pursuant to Ohio Revised Code Sections 120.05 and 2921.13.
5. I hereby affirm that the information I have provided on this financial disclosure form is true to the best of my knowledge.

X Von Clark Davis 12-6-17
Affiant's Signature Date

MELYNDA COOK
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Notary Public/Individual duly authorized to administer oath:
Subscribed and duly sworn before me according to law, by the above named applicant this 6th day of December, 2017, at Hamilton, County of Butler and State of Ohio.

Melynda Cook — Notary
Signature of person administering oath — Title

X. JUDGE CERTIFICATION

I hereby certify that above-noted applicant is unable to fill out and/or sign this financial disclosure/ affidavit for the following reason: _____

I have determined that the applicant meets the criteria for receiving court appointed counsel.

_____
Judge's Signature Date

OPD-206R rev. 9/2005

FEB 10 PM
BUTLER COU
CLERK OF CO

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	Case No. CR 1983-12-0614
vs.	:	
VON CLARK DAVIS	:	Judge Daniel Andrew Nastoff
Defendant.	:	

ENTRY UNDER SEAL

ENTRY GRANTING DEFENDANT'S MOTION AND MEMORANDUM FOR THE APPROPRIATION OF FUNDS FOR A PSYCHOLOGIST

TR 2-10 10
BY C Johnson

(320)

IMAGED
FILED
10 FEB 11 PM 1:03
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	
Appellee,	:	**Case No. CR 1982 12-0614**
vs.	:	
VON CLARK DAVIS,	:	**Judge Daniel Andrew Nastoff**
Appellant.	:	

ORDER

The Court being fully advised hereby GRANTS Defendant/Appellant's Motion for Appointment of Counsel and Motion to Allow Appearance *Pro Hac Vice*. Laurence Komp and John Parker, both Rule 20 Appellate Qualified, are appointed to represent Mr. Davis on appeal. Alan Freedman is also appointed and permitted to appear *pro hac vice* in this matter.

Judge Daniel Andrew Nastoff

321

2008 MAR 26 PM 3:59

IMAGED

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	**CASE NO. CR 1983 12 0614**
Plaintiff,	:	**Judge Andrew Nastoff**
-vs.-	:	**ENTRY**
VON CLARK DAVIS,	:	
Defendant.	:	

The Court hereby orders that the entry granting Defendant's motion for the appropriation of funds for a psychologist shall be re-filed under seal. The entry was originally filed on April 3, 2008. A copy of this order shall be affixed to the front of the sealed envelope enclosing the entry.

SO ORDERED.

ENTER,

Andrew Nastoff, Judge

322

FILED
2008 MAR 26 PM 3:50
IMAGED

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	**CASE NO. CR 1983 12 0614**
Plaintiff,	**Judge Andrew Nastoff**
-vs.-	**ENTRY**
VON CLARK DAVIS,	
Defendant.	

The Court hereby orders that the entry granting Defendant's motion for the appropriation of funds for a neuro-psychologist shall be re-filed under seal. The entry was originally filed on April 3, 2008. A copy of this order shall be affixed to the front of the sealed envelope enclosing the entry.

SO ORDERED.

ENTER,

Andrew Nastoff, Judge

323

IMAGED

STATE OF OHIO	:	CASE NO. CR1983-12-0614
Plaintiff	:	STATE OF OHIO COUNTY OF BUTLER
VS.	:	COURT OF COMMON PLEAS
VON CLARK DAVIS	:	PRECIPE FOR DEATH WARRANT IN STATE CASE
Defendant	:	

: : : : : :

To the Clerk:

Issue for: **ISSUING DEATH WARRANT**

Cindy Carpenter — **Butler County Clerk of Court**
315 High Street, 5th floor
Hamilton, Ohio 45011

Issue Death Warrant on the above mentioned case

Required on behalf of the Prosecution.

ROBIN PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

MAO
June 23, 2010

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ROBIN PIPER
PROSECUTING ATTORNEY

GOVERNMENT SERVICES CENTER

32

7160 3901 9848 8767 4299

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) STEWART B. Date of Delivery

C. Signature X Agent Addressee

D. Is delivery address different from item 1? If YES, enter delivery address below: Yes No

RECEIVED
JUL 01 2010
CLERK OF COURT
SUPREME COURT OF OHIO

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:
SUPREME COURT OF OHIO
CLERKS OFFICE
65 SOUTH FRONT ST 8TH FLOOR
COLUMBUS, OH 43215

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 06 2010
CINDY CARPENTER
CLERK OF COURTS

CR 1983 12 0614

Cancelled

PS Form 3811, January 2005 Domestic Return Receipt

7160 3901 9848 8767 4305

A. Received by (Please Print Clearly) Lucia Wysong B. Date of Delivery JUN 30 2010

C. Signature X M. Wysong Agent Addressee

D. Is delivery address different from item 1? If YES, enter delivery address below: Yes No

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:
ANDREW NASTOFF Judge
GOVERNMENT SERVICES CENTER
315 HIGH STREET 3RD FLOOR
HAMILTON, OH 45011

L000 2251 28

CR 1983 12 0614

Cancelled

PS Form 3811, January 2005 Domestic Return Receipt

2. Article Number

7160 3901 9848 8767 4282

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Laurence E Komp B. Date of Delivery

C. Signature X Agent Addressee

D. Is delivery address different from item 1? If YES, enter delivery address below: Yes No

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:
LAURENCE KOMP
AKA CLARK DAVIS
ATTORNEY AT LAW
PO BOX 1785
MANCHESTER, MI 63011

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 06 2010
CINDY CARPENTER
CLERK OF COURTS

L000 2251 28

CR 1983 12 0614

PS Form 3811, January 2005 Domestic Return Receipt

2. Article Number

7160 3901 9848 8767 4312

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery 7-1-10

C. Signature X Agent Addressee

D. Is delivery address different from item 1? If YES, enter delivery address below: Yes No

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:
BUTLER COUNTY PROSECUTORS O
315 HIGH ST, 11TH FLOOR
ATTN JASON PHILLABAUM
HAMILTON, OH 45011

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 06 2010
CINDY CARPENTER
CLERK OF COURTS

L000 2251 28

Cancelled

CR 1983 12 0614

PS Form 3811, January 2005 Domestic Return Receipt

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First Class Mail
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CINDY CARPENTER
BUTLER COUNTY CLERK OF COURTS
GOVERNMENT SERVICES CENTER
315 HIGH ST STE 550
HAMILTON OH 45011-6060

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CINDY CARPENTER
BUTLER COUNTY CLERK OF COURTS
GOVERNMENT SERVICES CENTER
315 HIGH ST STE 550
HAMILTON OH 45011-6060

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GOVERNMENT SERVICES CENTER
315 HIGH ST STE 550
HAMILTON OH 45011-6060

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CINDY CARPENTER
BUTLER COUNTY CLERK OF COURTS
GOVERNMENT SERVICES CENTER
315 HIGH ST STE 550
HAMILTON OH 45011-6060

FILED
COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO
2010 JUL 15 AM 11:20
CAROL CARPENTER
CLERK COURTS

STATE OF OHIO Plaintiff	CASE NO. CR1983-12-0614 JUDGE ANDREW NASTOFF, PRESIDING JUDGE CHARLES PATER JUDGE KEITH M. SPAETH
vs. VON CLARK DAVIS Defendant	ENTRY ORDERING WRIT FOR EXECUTION OF DEATH PENALTY

On September 21, 2009, Von Clark Davis, was sentenced to Death as ORDERED in Count One of the Judgment of Conviction Entry, pursuant to R.C.2929.02(A) and 2903-04. As such, it is **ORDERED** that pursuant to R.C. 2949.21-.22, a *Writ for the Execution of the death penalty shall issue*, directed to the Sheriff, requiring that Von Clark Davis be conveyed to the custody of the Ohio Department of Rehabilitation and Correction and that Von Clark Davis be assigned to the appropriate institution and kept until the execution of his sentence. The death sentence shall be executed by lethal injection in accordance with the provisions of R.C. 2949.22, within the walls of the state correctional institution designated by the Director of the Rehabilitation and Correction as the location for executions, and within an enclosure to be prepared for such purpose that shall exclude public view, under the direction of the Warden of such institution or, in his absence, a deputy warden, on the November 9, 2010, or date otherwise designated by a court in the course of any appellate or post-conviction proceedings.

APPROVED AS TO FORM:

ROBIN N. PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY,

ENTER

NASTOFF, J.

PATER, J.

SPAETH, J.

325

DEATH WARRANT

FILED
2010 JUL 21 AM 10:57
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

IMAGED

THE STATE OF OHIO

Vs.

VON CLARK DAVIS

COMMON PLEAS COURT
BUTLER COUNTY, OHIO
315 HIGH STREET
HAMILTON, OHIO 45011
CASE NO.: CR 1983 12 0614

TO THE SHERIFF OF BUTLER COUNTY, OHIO
705 HANOVER STREET, HAMILTON, OHIO 45011

Whereas, the records of proceedings in the Common Pleas Court of Butler County, Ohio, reflect that this prisoner was sentenced to be executed and said punishment ordered to be inflicted within the walls of the Southern Ohio Correctional Facility.

The Sheriff of Butler County, Ohio, is hereby commanded that within thirty days from receipt of this Death Warrant to convey said prisoner, in a private and secure manner, to the Southern Ohio Correctional Facility at Lucasville, Ohio, to be received by the Superintendent, and kept until the day designated for his execution.

TO THE SUPERINTENDENT OR ASSOCIATE SUPERINTENDENT OF THE SOUTHERN OHIO CORRECTIONAL FACILITY

You are hereby commanded to take custody and to cause the condemned prisoner to be executed at the time and place named in this warrant.

You are further commanded to make return to the Clerk of Courts, Butler County, Ohio, to report the manner of this execution in compliance with this warrant issued by the Common Pleas Court, Butler County, Ohio.

PRISONER NAME:	**VON CLARK DAVIS**
DATE OF SENTENCE:	**JUNE 4, 1984**
EXECUTION DATE:	**NOVEMBER 9, 2010**
SHERIFF'S CONVEY:	**NO LATER THAN JULY 4, 1984**

Given under my hand and the Seal of the Court of Common Pleas, Butler County, Ohio, Tuesday, July 20, 2010.

Cindy Carpenter

Clerk of Courts, Butler County, Ohio

CINDY CARPENTER  CLERK OF COURTS

CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

Date: July 20, 2010 Case No.: CR 1983 12 0614

STATE OF OHIO VS VON CLARK DAVIS

SHERIFF'S RETURN OF CONVEY UPON ISSUANCE OF DEATH WARRANT COMMON PLEAS COURT, BUTLER COUNTY, OHIO

CONDEMNED PRISONER NAME: VON CLARK DAVIS

1. **Clerk's Receipt of Entry**: The Clerk of Courts of Butler County Common Pleas Court has received the Judgment Conviction Entry ordering the condemned prisoner to be conveyed to the Southern Ohio Correction Facility and executed at the time and place named in this Death Warrant.

Clerk's Time Stamp Here

Sentencing Entry and Issuance of Death Warrant verified by: Cindy Carpenter
Clerk of Courts

FILED
2010 JUL 21 AM 10:59
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

2. **Sheriff's Receipt:** The Butler County Sheriff, has received on this day the certified copy of the Judgment Conviction Entry and Death Warrant to Convey the Prisoner to the Southern Ohio Correction Facility.

Sheriff's Time Stamp Here

FILED
2010 JUL 21 AM 11:35
BUTLER COUNTY, OHIO
SHERIFF
RICHARD K. JONES

Certification of Receipt: Brenda A Miller #1558
Deputy Sheriff

3. **Certification of Convey by Sheriff :** The Southern Ohio Correction Facility has taken custody of said Prisoner and received the certified copy of the Judgment Conviction Entry and Death Warrant thereon.

_____ Date: _____
Deputy Sheriff

Mike Witt Bosc CRMO Date: 8-20-2010
~~Superintendent~~

4. **Filing of Executed Convey Order and Cost by Sheriff:** The Clerk of Courts of Butler County Common Pleas Court has received on this day the properly executed return of this document and shall record the Sheriff's costs for service and return of $43.30 upon the docket.

Sheriff return of Service	3.00
Mileage	40.30
Total	$43.30

Clerk's Time Stamp Here

RETURN AND FILE WITH THE CLERK OF COURT'S OFFICE

CINDY CARPENTER CLERK OF COURTS

SHERIFF'S COPY: (SERVED BY MONTY MAYER) C000216863
BUTLER COUNTY SHERIFF
705 HANOVER STREET
HAMILTON, OH 45011

Date: July 21, 2010 Case No.: CR 1983 12 0614
STATE OF OHIO VS VON CLARK DAVIS

PERSONAL SERVICE BY SHERIFF
COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

To the Butler County Sheriff: You are directed to serve the attached copy of a document of the Butler County Court of Common Pleas.

Please serve upon the following party:

Name: SOUTHERN OHIO CORRECTIONAL FACILITY
LUCASVILLE, OH 45699

CINDY CARPENTER
Butler County Clerk of Courts

By: Jody Whisman Miller
Deputy Clerk

BUTLER COUNTY SHERIFF'S OFFICE

RETURN OF PERSONAL SERVICE
COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

STATE OF OHIO

CASE NUMBER: CR 1983 12 0614

vs.

DATE ISSUED: July 21, 2010

VON CLARK DAVIS

PARTY INFORMATION:
Name: SOUTHERN OHIO CORRECTIONAL FACILITY
LUCASVILLE, OH 45699

SHERIFF'S INSTRUCTIONS: This document is required to be personally served upon the party named above.

DOCUMENTED ATTEMPTS AT SERVICE:
Date:_____
Date:_____
Date:_____

PERSONAL SERVICE:
Signature:_____

PERFECTED SERVICE:
Date:_____ Time:_____
Deputy:_____
Badge Number:_____

ALTERNATE SUBJECT SERVED:
Signature:_____
Relationship:_____

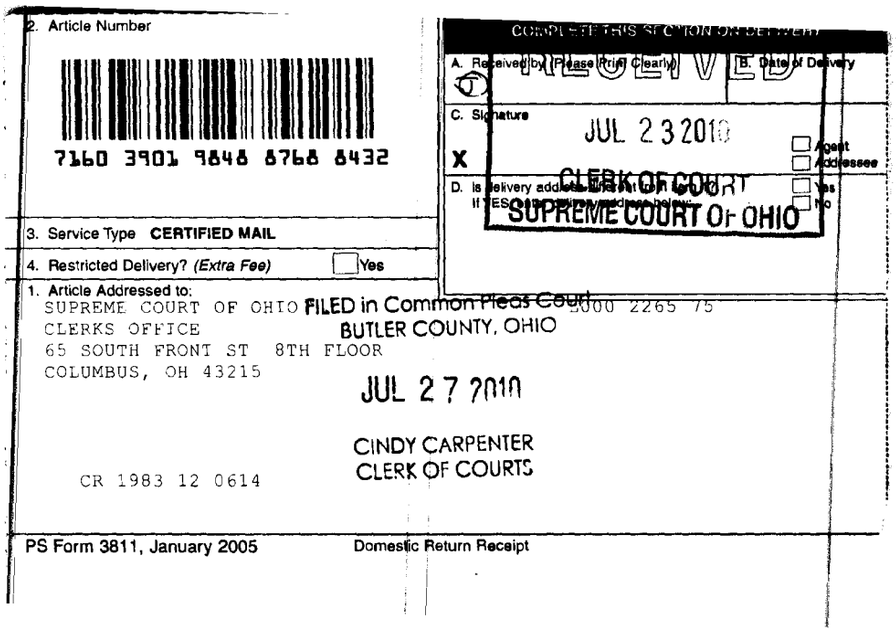
FAILURE OF SERVICE:
Reason for failure:_____
_____

SHERIFF'S FEES:
Mileage:_____
Return of Service:_____
TOTAL FEES:_____

CIVIL DIVISION
DATA ENTRY OF FEES
Initial:
Date: _____

_____
_____
_____
_____

File this document with Butler County Clerk of Courts



2. Article Number

7160 3901 9848 8768 8432

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

RECEIVED
JUL 23 2010
CLERK OF COURT
SUPREME COURT OF OHIO

C. Signature

X

Agent
Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Yes
No

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* Yes

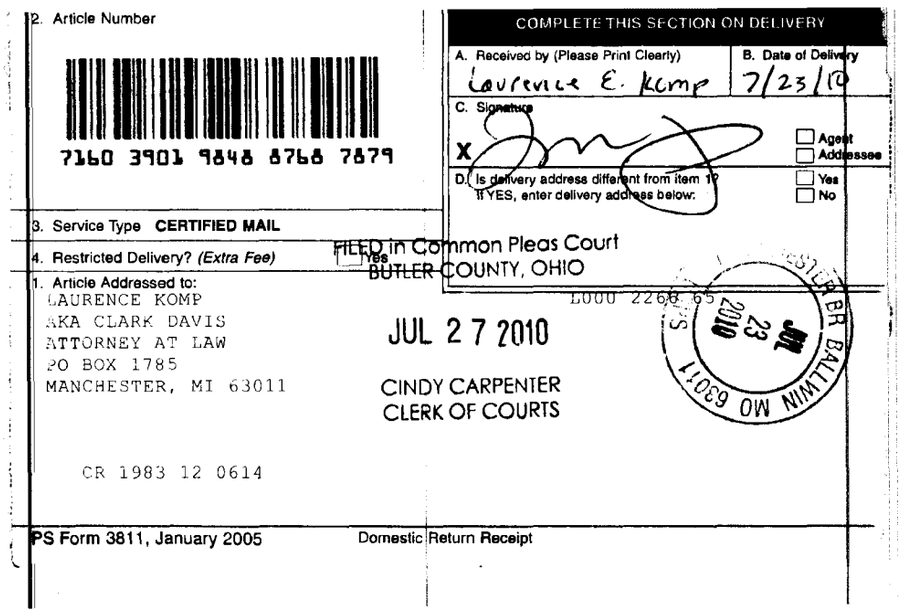
1. Article Addressed to:
SUPREME COURT OF OHIO
CLERKS OFFICE
65 SOUTH FRONT ST 8TH FLOOR
COLUMBUS, OH 43215

7000 2265 75

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 27 2010
CINDY CARPENTER
CLERK OF COURTS

CR 1983 12 0614

PS Form 3811, January 2005 Domestic Return Receipt



2. Article Number

7160 3901 9848 8768 7879

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Laurence E. Komp

B. Date of Delivery 7/23/10

C. Signature X

☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:
LAURENCE KOMP
AKA CLARK DAVIS
ATTORNEY AT LAW
PO BOX 1785
MANCHESTER, MI 63011

CR 1983 12 0614

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

JUL 27 2010

CINDY CARPENTER
CLERK OF COURTS

L000 2268 65

U.S. POSTAGE 2010 23 BALLWIN MO 63011

PS Form 3811, January 2005 Domestic Return Receipt

VV

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
SEP 23 2010
CINDY CARPENTER
CLERK OF COURTS

State of Ohio,		
Plaintiff-Appellee,	:	**Case No: CR1983-12-0614**
vs.	:	**Judge Andrew Nastoff**
Von Clark Davis,	:	
Defendants-Appellant.	:	

APPELLANT'S MOTION FOR A STAY OF EXECUTION

Von Clark Davis, by and through counsel, requests the Court for a stay of execution for the pendency of Appellant's direct review. Capital defendants are "entitled to have that review before paying the ultimate penalty. The right of review is otherwise rendered utterly meaningless." *McDonald v. Missouri*, 464 U.S. 1306-07 (1984) (Blackmun, J., Circuit Justice) ("It makes no sense to have the execution set on a date within the time specified for that review ... and before the review is completed.").

After Appellant filed his merit brief with the Twelfth Appellate District, Appellant's execution was set for November 9, 2010. Appellant possesses an appeal of right to the Twelfth Appellate District as well as the Ohio Supreme Court. *See* Ohio Rev. Code § 2929.05(A). Therefore, Appellant requests that this Court grant a stay of execution until the completion of his direct appeals as of right. Even though the execution date issued well after the Notice of Appeal and after briefing by the parties, Appellant is required to present this request to this Court pursuant to Twelfth Appellate Dist. Loc. R. 8.

Respectfully submitted,

Laurence E. Komp (0060142)
Attorney at Law
P.O. Box 1785
Manchester, Missouri 63011
636-207-7330 (Voice)
636-207-7351 (Facsimile)
lekomp@swbell.net

John P. Parker (0041243)
Attorney at Law
988 East 185th Street
Cleveland, Ohio 44119
216-881-0900

-and-

ALAN M. FREEDMAN (PHV)
MIDWEST CENTER FOR JUSTICE, LTD.
P.O. Box 6528
Evanston, Illinois 60201
Phone: (847) 492-1563
Fax: (847) 492-1861

COUNSEL FOR VON CLARK DAVIS

CERTIFICATE OF SERVICE

I certify a copy of the foregoing **APPELLANT'S MOTION FOR A STAY OF EXECUTION** was mailed regular U.S. Mail to Daniel Eichel and Michael A. Oster, Jr. Assistant Butler County Prosecuting Attorneys at the Government Services Center, 315 High Street, Hamilton, Ohio 45011, on this the 23 day of September, 2010.

Laurence E. Komp (0060142)
COUNSEL FOR APPELLANT

Laurence E. Komp
Attorney at Law
P.O. Box 1785
Manchester, MO 63011
(636) 207-7330
Fax Number (636) 207-7351
Email - lekomp@swbell.net

FAX TRANSMITTAL FORM

To: Clerk of Court, Butler County Court of Common Pleas
Name:
CC:
Phone:
Fax: 513-887-3966

From: Larry Komp
Date Sent: 9/23/10

Number of Pages:3

Clerk of Court,

Attached please find a motion for extension of time to be filed in Appellate Case No. CA2009-10-263. The information required by rule is as follows:

(1) Name of Court - **Butler County, Court of Common Pleas**
(2) Case Caption - **State v. Davis**
(3) Case Number - **CR1983-12-0614**
(4) Assigned Judge - **Judge Andrew Nastoff**
(5) Name, Address, phone number, fax number, Supreme Court registration number, and email address of attorney submitting fax filing - **Laurence E. Komp, Attorney at Law, P.O. Box 1785, Manchester, Missouri 63011, 636-207-7330 (Voice), 636-207-7351 (Facsimile), Ohio Bar 0060142, lekomp@swbell.net**
(6) Description of document - **Appellant's Motion for Stay of Execution**.
(7) Date of transmission - **9/23/10**
(8) Transmitting fax number - **636-207-7351**
(9) Total Number of pages (including cover sheet) - **3**

If I can be of further assistance, do not hesitate to contact me.

Sincerely,

CONFIDENTIALITY NOTICE: THIS FACSIMILE IS A CONFIDENTIAL COMMUNICATION FROM LAURENCE E. KOMP ATTORNEY AT LAW AND MAY BE SUBJECT TO ATTORNEY-CLIENT PRIVILEGE. The information contained in this communication, and any attachments thereto, is privileged and confidential and intended solely for use by the addressee(s). Any other use, dissemination, or copying of this facsimile communication is strictly prohibited and is a tortious interference with our confidential business relationships. If this was erroneously sent to you, please notify us immediately at (636) 207-7330 and permanently delete the original or any printed copies of this communication.

FILED
2010 OCT 11 AM 10:45
CHRIS CARPENTER
BUTLER COUNTY
CLERK OF COURTS

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO	*	**Case Number: CR 1983 12 0614**
	*	
Plaintiff,	*	**Judge Andrew Nastoff**
	*	
vs.	*	**DECISION AND ENTRY DENYING DEFENDANT'S MOTION FOR A STAY OF EXECUTION**
	*	
VON CLARK DAVIS	*	
	*	
Defendant.	*	
	*	

* * * * * * * * * * * * * * * * * * *

This matter is before the Court on Defendant's motion for a stay of execution for the pendency of his direct review. After due consideration, Defendant's motion is not well taken and is **DENIED.**

SO ORDERED.

ENTER,

Andrew Nastoff, Judge

cc: Michael A. Oster, Jr., Assistant Prosecuting Attorney
Laurence E. Komp, Attorney for the Defendant

Judge Andrew Nastoff
Common Pleas Court
Butler County, Ohio

FILED
2011 OCT 21 PM 12:47
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	**Case No. CR-1983-12-0614**
Plaintiff-Respondent,	:	**Judge Nastoff**
v.	:	
VON CLARK DAVIS,	:	**CAPITAL CASE**
Defendant-Petitioner.	:	

DEFENDANT-PETITIONER'S MOTION FOR LEAVE OF COURT TO CONDUCT DISCOVERY

Defendant-Petitioner Von Clark Davis, through counsel, moves this Court for leave to conduct discovery. Davis is concurrently filing a post-conviction petition, and intends to amend the petition to include all such potential claims for which he discovers a sufficient basis.

For the reasons set forth in the attached memorandum, and to ensure Davis' rights to due process and a full and fair hearing on his meritorious claims, this Court should allow Davis to conduct the necessary discovery.

Respectfully submitted,

Kort Gatterdam (0040434)
Erik P. Henry (0085155)
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: (614) 365-4100
Facsimile: (614) 365-9145
E-mail: gatterdam@carpenterlipps.com
henry@carpenterlipps.com

COUNSEL FOR DEFENDANT-PETITIONER

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 21, 2011, Petitioner Von Clark Davis files his post-conviction petition containing nine Grounds for Relief supported by fourteen exhibits. Davis has presented, through supporting affidavits and other documentary evidence, substantive grounds for relief in his petition. Because he has presented substantive grounds for relief, R.C. 2953.21(E) requires that this Court "proceed to a prompt hearing on the issues." *See also State v. Milanovich* (1975), 42 Ohio St.2d 26, 50. In Ohio, "the courts assume that the sole purpose of discovery is to assist trial preparation." *State ex rel. WHIO-TV-7 v. Lowe* (1997), 77 Ohio St.3d 350, 354. Thus, because Davis' petition alleges substantive grounds for relief that entitle him to a hearing, he should be granted discovery to assist in preparing for the hearing. By granting this discovery motion, the Court will ensure that Davis is afforded due process, that he is not denied a full and fair hearing on his meritorious claims, and that the interests of justice are served.

II. DISCOVERY SOUGHT

Discovery is required at this time to uncover the following relevant and material evidence that supports Davis' grounds for relief:

A. Order that Davis' counsel be allowed to conduct depositions of Davis' trial defense counsel, Melynda W. Cook-Reich and Randall L. Porter. (Claims 1–8)

B. Order that Davis' counsel be allowed to conduct depositions of Davis' mitigation specialists/investigators John Lee, Jessica Love and Angie Wiley. (Claims 1–5, 7)

C. Order that Davis' counsel be permitted to conduct depositions of original trial counsel Michael Shanks and John Garretson. (Claim 8)

D. Order that Davis' counsel be permitted to conduct a deposition of Cynthia Mausser. (Claim 3)

E. Order that Davis' counsel be permitted to conduct a deposition of Dr. Bob Smith. (Claim 4)

Davis requests that this Court establish a scheduling setting forth the deadlines by which the above discovery is to be completed. Davis suggests that depositions proceed within sixty days of this Court granting this motion.

III. ARGUMENT

A. This Court Should Allow Petitioner Davis to Conduct the Discovery Sought.

The Ohio post-conviction statute is silent on the issue of discovery. Instead, the focus of R.C. 2953.21 is on the threshold burden that a petitioner must satisfy to be entitled to an evidentiary hearing. In the State of Ohio, a petitioner in a post-conviction proceeding has the initial burden of submitting evidence demonstrating to the trial court that a hearing is warranted on the constitutional violations alleged in the petition. *State v. Kapper* (1983), 5 Ohio St.3d 36; *State v. Cole* (1982), 2 Ohio St.3d 112, *State v. Pankey* (1981), 68 Ohio St.2d 58; *State v. Jackson* (1980), 64 Ohio St.2d 107.

This documentation must consist of evidence *dehors* the record. *State v. Milanovich* (1975), 42 Ohio St.2d 46; *State v. Mishelek* (1975), 42 Ohio St. 140. Such evidence is usually in the form of affidavits or documents. The petitioner must submit these exhibits with the petition or face summary dismissal. *Milanovich*, 42 Ohio St.2d 46; R.C. 2953.21(D).

The State, consistent with the Fourteenth Amendment's Due Process Clause, cannot place this initial evidentiary burden on a petitioner and then deny him a meaningful opportunity to meet that burden. To deny Davis the opportunity to meet his burden eviscerates his right to pursue post-conviction remedies. Davis has made a diligent effort to demonstrate why he needs such evidence and how he has been prejudiced by not receiving this material before his trial. However, Davis' Fourteenth Amendment due process rights will be effectively curtailed if he is now prohibited from conducting post-conviction discovery.

The majority of Davis' claims relate to the ineffectiveness of his trial counsel. In reviewing these claims, this Court must "conduct an objective review of [counsel's] performance, measured for 'reasonableness under prevailing professional norms,' **includes** a context-dependent consideration of the challenged conduct as seen 'from counsel's perspective at the time.'" *Wiggins v. Smith* (2003), 539 U.S. 510, 523 (quoting *Strickland v. Washington* (1984), 466 U.S. 668, 688) (emphasis added); *Connor v. McBride*, 375 F.3d 643, 656 (7th Cir. 2006) ("evaluated from counsel's perspective at that time"). The best source of evidence related to this time and context-dependent inquiry is the defense "team," and the members of the defense team at the time of trial. Defense counsel and the investigators/mitigation specialists would be in the best position to state why they did or did not do the things claimed in the post-conviction petition.

Recently, Magistrate Judge Kemp from the United States District Court, Southern District of Ohio, recognized this assertion in granting depositions of trial counsel in a federal habeas case. *See* Opinion and Order at 10–11, Marvin G. Johnson v. David Bobby, No. 2:08-cv-55 (S.D. Ohio Sept. 30, 2010) ("It is usually the case that information about what strategy defense attorneys formulated and what investigation was conducted to arrive at and implement that strategy is uniquely in possession of those defense attorneys and that is usually sufficient to establish good cause to depose trial counsel about their actions and omissions. . . . [D]epositions of Petitioner's trial attorneys are the best, if not the only, source of information about counsel's investigation, impressions, preparation, and strategic decisions."). Indeed, the depositions of trial counsel will allow this Court to determine whether there exists a tactical reason for any omission or action, and, if so, whether the tactical basis offered by trial counsel was reasonable.

Davis should be allowed the opportunity to conduct the discovery he seeks because (1) post-conviction proceedings are civil in nature, and (2) northing in R.C. 2953.21 specifically addresses discovery in such a way as to take precedence over the civil rules governing discovery. Davis has submitted affidavits and documents demonstrating his grounds for relief; therefore, discovery should be granted.

B. Federal Standards Require Liberal Discovery

In addressing the Habeas Rule 6 standard of "good cause" for discovery, the United States Supreme Court held that "[w]here specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry." *Bracy v. Gramley* (1997), 520 U.S. 899, 908–09 (quoting *Harris v. Nelson* (1969), 394 U.S. 286, 300). The Court recognized that Bracy's claim was "only a theory at this point," but the Court also made clear that whether the petitioner ultimately prevails on the claim for which he requests discovery is not relevant to whether discovery should be granted. *Id.*

Unlike Mr. Bracy, however, Petitioner Davis has offered evidence in support of his post-conviction claims—he is not positing a theory before this Court. In a case such as this, where the petitioner has already presented evidence in support of his claims—hence, the claims are not merely speculative—the trial court's granting of discovery is even more deserving. *McDaniel v. United States District Court for the District of Nevada* (9th Cir. 1997), 127 F.3d 886.

Moreover, the United States Supreme Court has said that "[m]utual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." *Hickman v. Taylor* (1947), 329 U.S. 495, 507. According to the Ohio Supreme Court, "[t]he purpose of the liberal

discovery policy contemplated by the Ohio Rules of Civil Procedure is the narrowing and sharpening of the issues to be litigated." *State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St.2d 55, 56.[1] It was in that spirit that Civ. R. 26(B) was promulgated. The rule provides for a liberal discovery policy:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Civ. R. 26(B)(1). By permitting discovery, this Court will allow Davis to fairly present and exhaust the constitutional challenges to his judgment and death sentence in the state courts. This step is necessary should these claims be raised in federal court. Furthermore, the discovery sought is limited to the necessary information. Thus, it will conserve judicial resources by focusing the issues presented in his post-conviction petition.

C. Petitioner Is Entitled to Conduct Discovery Because He Has Presented Evidence and Materials Establishing Substantive Grounds for Relief.

The evidentiary materials and affidavits submitted by Petitioner Davis with his petition are sufficient to establish, prima facie, substantive grounds for relief on his claims. Relevant documents and affidavits in support of the grounds for relief were submitted with his petition and are before this Court.

Having met the threshold burden, the post-conviction statute affords Davis the immediate right to an evidentiary hearing on these grounds. R.C. 2953.21(E); *see also Milanovich*, 42 Ohio

[1] Post-conviction actions are civil proceedings. *Milanovich*, 42 Ohio St.2d at 49. As such, the Ohio Rules of Civil Procedure apply. *Id.* at 52; *State v. Nichols* (1984), 11 Ohio St.3d 40, 42–43.

St.2d at 51 (If the petition "states a substantive ground for relief and . . . relies upon matters outside the record, the court should thus proceed to a prompt evidentiary hearing.").

For this statutorily-mandated hearing to be useful, this Court should permit Davis to conduct the discovery he seeks. The necessary discovery sought will allow him to develop the relevant issues for the hearing, focus the proceedings, and conserve judicial resources. It will also give Davis the opportunity to more fully develop the facts establishing that he is entitled to relief. The due process and fundamental fairness rights guaranteed by the United States Constitution's Fourteenth Amendment, and similar provisions in the Ohio Constitution, will be served, as will the purpose of Ohio's post-conviction statute.

D. Even If This Court Is Not Prepared to Grant a Hearing, Due Process and Fundamental Fairness Require That This Court Permit Discovery.

Davis has presented sufficient documents and evidentiary materials entitling him to a full evidentiary hearing and the discovery necessary to prepare for that hearing. But if this Court is not prepared to grant a hearing at this time, it should nonetheless permit Davis to conduct the necessary discovery sought so that he can gather additional evidence to support his claims and fully demonstrate that he is entitled to a hearing. Allowing discovery before granting Davis an evidentiary hearing conserves judicial resources, furthers the goals of the post-conviction statute, and ensures due process.

The post-conviction statute places the burden on the petitioner to present documents and other evidentiary materials "containing sufficient operative facts to demonstrate [his] claim." *State v. Smith* (1986), 30 Ohio App.3d 138, 140. To meet this burden, Davis must have access to evidentiary materials that are in the hands of persons not likely to grant him access, e.g., the State. Refusing to permit Davis to conduct necessary discovery may effectively foreclose him from ever meeting the threshold burden placed on him by the statute. This result would deprive

Davis of his rights under the post-conviction statute and violate his due process rights under both the Ohio and federal constitutions.

The need for liberal discovery in capital cases is especially acute because it helps to ensure the reliability in the proceedings and outcome—a particularly important concern where a death sentence is involved. The United States Supreme Court has repeatedly emphasized the need to ensure a heightened reliability of the outcome where a person's life is at stake. *See, e.g.*, *Beck v. Alabama* (1980), 447 U.S. 625, 637; *Lockett v. Ohio* (1978), 438 U.S. 586, 604; *Woodson v. North Carolina* (1976), 428 U.S. 280.

IV. CONCLUSION

Petitioner Von Clark Davis has produced sufficient evidence *dehors* the record in the form of affidavits and other documents to support the grounds for relief contained in his Petitioner for Post-Conviction Relief. Granting him discovery will ensure due process and fundamental fairness, conserve judicial resources, and serve the interests of justice.

Therefore, Davis respectfully requests that this Court grant this Motion for Discovery. He further requests that this Court allow him leave to amend his petition to include additional constitutional claims identified after discovery is conducted.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Leave of Court to Conduct Discovery was forwarded by first-class, postage prepaid U.S. Mail to Michael T. Gmoser, Butler County Prosecuting Attorney, 315 High Street, 11th Floor, Hamilton, Ohio 45011, on this 21st day of October, 2011.

Kort Gatterdam

050-384-296974

FILED
2011 OCT 21 PM 12:47
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	**Case No. CR-1983-12-0614**
Plaintiff-Respondent,	:	**Judge Nastoff**
v.	:	
VON CLARK DAVIS,	:	**CAPITAL CASE**
Defendant-Petitioner.	:	

DEFENDANT-PETITIONER'S MOTION FOR RECUSAL

Defendant-Petitioner Von Clark Davis, through counsel, moves this Court to recuse itself from this case. Reasons in support of this motion are more fully stated in the attached memorandum in support.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-PETITIONER

MEMORANDUM IN SUPPORT

On December 19, 2007, to comply with granting of a conditional writ of habeas corpus in *Davis v. Coyle* (6th Cir. 2007), 475 F.3d 761, this Court granted Defendant-Petitioner Von Clark Davis a new sentencing hearing. A resentencing hearing was conducted before this Court from September 8, 2009 through September 10, 2009. At the conclusion of the resentencing hearing, on September 10, 2009, this Court along with two other judges resentenced Davis to death. The sentencing opinion was filed on September 21, 2009.

On September 9, 2009, Davis' sister, Carol Smith, testified on Davis' behalf. Ms. Smith revealed that she has a son by the name of Lahray Thompson, and that Mr. Thompson had been convicted of aggravated murder in a capital case. (Tr. Vol. II, p.126). Following Ms. Smith's testimony, this Court disclosed that he prosecuted Mr. Thompson and argued to the jury that he should receive the death sentence. (Tr. Vol. II, p.131). In the concurrently filed Post-Conviction Petition, one of the grounds for relief is that Davis' trial counsel provided ineffective assistance for not seeking recusal of this Court. (See Sixth Ground for Relief).

"It is well settled that a criminal trial before a biased judge is fundamentally unfair and denies a defendant due process of law." *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶ 34 (citing *Rose v. Clark* (1986), 478 U.S. 570, 577; *Tumey v. Ohio* (1927), 273 U.S. 510, 534). According to the Ohio Supreme Court, the removal of a judge is necessary "to avoid even an appearance of bias, prejudice, or impropriety, and to ensure the parties, their counsel, and the public the unquestioned neutrality of an impartial judge." *In re Disqualification of Floyd*, 101 Ohio St.3d 1215, 2003-Ohio-7354, ¶ 10; *see also State ex rel. Turner v. Marshall* (1931), 123 Ohio St. 586, 587 ("[I]t is of vital importance that the litigant believe that he will have a fair trial.").

Canon 3 of the Ohio Code of Judicial Conduct states generally that "a judge shall perform the duties of judicial office impartially and diligently." Furthermore, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Canon 3(E)(1).

The post-conviction petition being filed concurrently with this motion contains a claim regarding whether defense counsel should have sought the recusal of this Court prior to conducting the penalty phase. The reasons why defense counsel were ineffective in not seeking recusal are set forth in the Sixth Ground for Relief of the post-conviction petition. (Sixth Ground and relevant attachments included herein). It would be unfair to have this Court now rule on whether that ground or any other grounds in the post-conviction petition should require a new penalty phase given the nature of the Sixth Ground.

For these reasons, this Court's removal from this case is necessary "to avoid even an appearance of bias, prejudice, or impropriety, and to ensure the parties, their counsel, and the public the unquestioned neutrality of an impartial judge." *In re Disqualification of Floyd*, 101 Ohio St.3d 1215, 2003-Ohio-7354, ¶ 10. Therefore, Davis, through counsel, respectfully asks this Court to recuse itself from this matter and ask the Chief Justice to appoint a new judge to rule upon the concurrently filed post-conviction petition.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Recusal was forwarded by first-class, postage prepaid U.S. Mail to Michael T. Gmoser, Butler County Prosecuting Attorney, 315 High Street, 11th Floor, Hamilton, Ohio 45011, on this 21st day of October, 2011.

Kort Gatterdam

050-384-296792

SIXTH GROUND FOR RELIEF

93. Davis hereby incorporates by reference all previous paragraphs as if fully rewritten herein.

94. Davis' sentence is void and/or voidable because defense counsel provided ineffective assistance at the penalty phase and as a result, Davis was sentenced to death. Counsel knew that Judge Andrew Nastoff served as a prosecutor in the death penalty case of Davis' nephew, Lahray Thompson, and advocated for Mr. Thompson's death, yet counsel failed to seek the removal of Judge Nastoff. Counsel did not provide objectively reasonable assistance and Petitioner was prejudiced as a result of this failure. *Strickland v. Washington* (1984), 466 U.S. 668. Davis was denied his right to effective assistance of counsel as guaranteed by the Fifth, Sixth, Eight, and Fourteenth Amendments to the United States Constitution and Article I, §§ 1, 2, 5, 9, 10, 16, and 20 of the Ohio Constitution.

95. "It is well settled that a criminal trial before a biased judge is fundamentally unfair and denies a defendant due process of law." *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶ 34 (citing *Rose v. Clark* (1986), 478 U.S. 570, 577; *Tumey v. Ohio* (1927), 273 U.S. 510, 534). According to the Ohio Supreme Court, the removal of a judge is necessary "to avoid even an appearance of bias, prejudice, or impropriety, and to ensure the parties, their counsel, and the public the unquestioned neutrality of an impartial judge." *In re Disqualification of Floyd*, 101 Ohio St.3d 1215, 2003-Ohio-7354, ¶ 10; *see also State ex rel. Turner v. Marshall* (1931), 123 Ohio St. 586, 587 ("[I]t is of vital importance that the litigant believe that he will have a fair trial.").

96. During the mitigation hearing, Davis' sister, Carol Smith, testified on Davis' behalf. Ms. Smith revealed that she has a son by the name of Lahray Thompson, and that Mr. Thompson had been convicted of aggravated murder in a capital case. (Tr. Vol. II, p.126)

97. Following Ms. Smith's testimony, Judge Nastoff disclosed that he was a member of the prosecution team against Mr. Thompson and had argued to the jury that he should receive the death sentence. (Tr. Vol. II, p.131). Indeed, the motions filed pretrial in Mr. Thompson's case confirm that Judge Nastoff was actively seeking the death penalty against Mr. Thompson. Ex. M, Prosecution Memorandums in Opposition filed in State v. Lahray Thompson. The transcript from Mr. Thompson's trial confirms that Judge Nastoff argued that Mr. Thompson was eligible for the death penalty. Ex. N, State v. Lahray Thompson Trial Tr. 1188–92. The transcript further reveals that he called Mr. Thompson a liar. *Id.* 1205–07.

98. Davis' counsel stated that the defense already knew Judge Nastoff was involved in the prosecution, but made the decision not to seek his recusal. (Tr. Vol. II, p.132). Counsel knew that Judge Nastoff had previously sought the death penalty against a member of Davis' family, yet did not seek to remove Judge Nastoff from the case. As a prosecutor in Mr. Thompson's case, Judge Nastoff obtained knowledge of Mr. Thompson's family, which included Davis and some of his witnesses. Further, Judge Nastoff had already argued in favor of sentencing Davis' nephew to death, and believed that Mr. Thompson was a liar. Thus, to avoid even the appearance of bias, prejudice, or impropriety, and to ensure the unquestioned neutrality of an impartial judge to the parties, their counsel, and the public, Judge Nastoff should not have

been deciding Davis' fate and instead should have been removed from the case. Ex. D, Affidavit of Diane Menashe.

99. Mr. Davis's attorneys never discussed the conflict issue with Mr. Davis. Ex. B, Affidavit of Von Clark Davis. Had they done so, Mr. Davis would have requested that Judge Nasthoff recuse himself. Mr. Davis did not find out about the issue until after his sister testified at the penalty phase hearing.

100. Davis supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate a lack of competent counsel and prejudice that resulted from that ineffectiveness. *State v. Jackson* (1980), 64 Ohio St.2d 107, 111. Davis must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

Supporting Exhibits: B, Affidavit of Von Clark Davis; D, Affidavit of Diane Menashe; M, Prosecution Memorandums in Opposition filed in State v. Lahray Thompson; N, State v. Lahray Thompson Trial Transcript.

Legal Authority in Support of Ground for Relief: Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; Article I, §§ 1, 2, 5, 9, 10, 16, and 20 of the Ohio Constitution; *Strickland v. Washington* (1984), 466 U.S. 668; *Rose v. Clark* (1986), 478 U.S. 570; *Tumey v. Ohio* (1927), 273 U.S. 510; *In re Disqualification of Floyd*, 101 Ohio St.3d 1215, 2003-Ohio-7354; *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128; *State v. Jackson* (1980), 64 Ohio St.2d 107; *State ex rel. Turner v. Marshall* (1931), 123 Ohio St. 586.

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	Case No. CR-1983-12-0614
Plaintiff-Respondent,	:	Judge Nastoff
v.	:	
VON CLARK DAVIS,	:	CAPITAL CASE
Defendant-Petitioner.	:	

AFFIDAVIT OF VON CLARK DAVIS

COUNTY OF MAHONING)
) SS:
STATE OF OHIO)

I, Von Clark Davis, being first duly cautioned do state the following:

1. I am over 18 years of age, am of sound mind, and am competent to testify regarding the matters discussed in this affidavit.

2. I am the Defendant in the above-captioned case. My attorneys for my September, 2009 penalty phase hearing were Randall Porter and Melynda Cook-Reich.

3. I discussed with my attorneys all my certificates, job evaluations, good conduct as well as guards and case managers that have seen me in prison since 1984. Other than the institutional summary introduced through Scott Nowak, my attorneys did not present any evidence at the penalty phase hearing of my job reviews, achievements or good conduct while in prison.

4. My attorneys never asked me for names of guards, case managers (other than Mr. Nowak) or other prison personnel to interview about possibly testifying for me. I could have provided them a number of names, particularly of guards at OSP (Ohio State Penitentiary) where I have been for the last 4 years as well as the two institutions I had previously been housed, Mansfield Correctional Institution and the Southern Ohio Correctional Institution. I believe they have seen me a sufficient amount of time to be able to attest that, among other things: I follow the rules, I do not act out, I am a hard worker and I have been helpful to them in a number of ways over the years.

EXHIBIT

B

5. I recall my attorneys mentioning at the sentencing hearing that they were going to have John Lee testify about some interviews he did of the following family members: Charles Flowers, Milton Flowers, Fannie Whiteside, and Elizabeth Crawford. I was upset that my attorneys did not call Mr. Lee to testify or attempt to admit the write-ups from Mr. Lee and others of these family members who were deceased or who had dementia at the time of my September, 2009 hearing. I thought these interviews provided important family insight that was not contained in other people's testimony. I also believed that their information was necessary as substantive evidence, not just for Dr. Smith's social history.

6. My attorneys mentioned to me that they were going to call someone from the Parole Board to say that I would never be paroled. I told both my attorneys and the mitigation specialist from the Office of the Public Defender that I did not like this idea at all. I thought this person would be putting a nail in my coffin. Mr. Porter said this information would help. He and I argued about it because I did not agree.

7. My attorneys said to me that I was never getting out of prison. I wanted some hope of getting out. They sent the mitigation specialist up to talk to me about possibly taking a life without parole deal but I rejected that. I had no idea that life without parole was not a sentencing option in my case.

8. My attorneys did not discuss at all with me their decision not to seek the recusal of Judge Nastoff. I did not know until my sentencing hearing in September, 2009 that Judge Nastoff was one of the prosecutors who went to trial and sought the death penalty against my nephew, Lahray Thompson. I was too shocked to say anything to my attorneys at that point but had I been asked earlier, I would have asked my attorneys to seek Judge Nastoff's recusal.

9. Prior to my first trial in this case, back in 1984, I had attorneys Michael Shanks and John Garretson. I was unaware of all the consequences of my jury waiver back in 1984. I was not told by my trial attorneys that once I waived a jury, I could never have a jury in my case even if I was convicted and the case was reversed on appeal. I was also under the impression that the jury waiver applied to this panel of judges only and for this trial only, not to any new panel of judges or even one different judge that might hear the case later if my case was reversed on appeal. I was not informed that if death penalty law changed, I would not get the benefit of those changes because I had waived my right to a jury trial. All of these things would have affected my decision to waive jury and I would not have waived jury had I known these things back in 1984.

FURTHER AFFIANT SAYETH NAUGHT.

Von Clark Davis

Sworn to and subscribed before me this 17th day of October, 2011.

Notary Public

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	**Case No. CR-1983-12-0614**
Plaintiff-Respondent,	:	**Judge Nastoff**
v.	:	
VON CLARK DAVIS,	:	**CAPITAL CASE**
Defendant-Petitioner.	:	

AFFIDAVIT OF DIANE M. MENASHE

COUNTY OF FRANKLIN)
) SS:
STATE OF OHIO)

I, Diane Menashe, being first duly cautioned do state the following:

1. I am over 18 years of age, am of sound mind, and am competent to testify regarding the matters discussed in this affidavit.

2. I am attorney, licensed to practice law in the State of Ohio since 1998. I worked in the Office of the Ohio Public Defender from 1997 to 2001. From 2001 to present, I have been in private practice in my own office, Diane M. Menashe Co., L.P.A.

3. My practice is exclusively focused on criminal defense in state and federal court. I have litigated numerous cases in state and federal court.

4. I am certified by the State of Ohio as lead counsel in capital cases pursuant to Rule 20 of the Ohio Rules of Superintendence and have handled and tried numerous capital cases. I have also handled two federal capital cases that went to jury, *United States v. Lawrence* and *United States v. Henderson*, both in the Southern District of Ohio, Eastern Division.

5. I was retained by Attorney Kort Gatterdam to provide my opinion on the sentencing phase trial beginning September 8, 2009, in State of Ohio v. Von Clark Davis.

6. As part of my duties, I reviewed: the September 8, 2009 – September 10, 2009 penalty phase transcript; Supreme Court of Ohio opinions; Court of Appeals opinions; Sixth Circuit Court of Appeals opinion ordering a new penalty phase hearing; mitigation write-

EXHIBIT

D

ups; affidavits of Cynthia Mausser, Dr. Bob Smith, Kort Gatterdam, and Von Clark Davis; transcript of proffer of defense witnesses for August 1989 penalty phase hearing, p. 1–5; prior penalty phase opinions; prison records attached to post-conviction petition; penalty phase exhibits B-I.

7. I am fully conversant with the Sixth Amendment test for ineffective assistance of counsel enunciated in *Strickland v. Washington* (1984), 466 U.S. 668, and its progeny. Based upon my experience and upon the prevailing constitutional standards, it is my professional opinion that trial counsel's performance was deficient in several areas and those deficiencies prejudiced the penalty phase of Von Clark Davis's case.

8. First Ground for Relief – I am familiar with the Sixth Circuit's Opinion in *Davis v. Coyle* (6th Cir. 2007), 475 F.3d 761. In that case, the Sixth Circuit granted Davis habeas relief because during Davis' second penalty phase hearing, the three-judge panel erroneously excluded testimony regarding Davis' exemplary behavior on death row between his first and second sentencing hearings. *Id.* at 770. Regarding the evidence, the Sixth Circuit stated:

> Such testimony would have established that Davis was classified as an "A" prisoner, indicating that he had no discipline or conduct problems; that he was the clerk on death row for the unit manager and helped conduct tours of death row; and that he had created no problems for other inmates or for security personnel and had no conduct write-ups. Davis worked directly for Oscar McGraw, the unit manager for death row, who complimented Davis's positive attitude and pleasant personality. Herb Wendler, Davis's case manager, observed that Davis was cooperative and courteous, that he had been given much more freedom than other inmates on death row, and that he had been placed in various positions of trust within the unit.

Id. at 773. The Sixth Circuit determined that based on the record in the case, this evidence was "without doubt . . . highly relevant to the single aggravating factor relied upon by the state—that future dangerousness should keep Davis on death row." *Id.*

9. It is my understanding the defense counsel handling Davis' 2009 penalty phase hearing never attempted to contact Sgt. Gordy Pullman, Oscar McGraw, Herb Wendler or any other witnesses who may have had information as to Davis' model behavior while on death row. I find this to be deficient performance. The anticipated testimony of Oscar McGraw and Herb Wendler was the basis for the Sixth Circuit's reversal of Davis' 1989 death sentence. There is no legitimate reason for defense counsel's failure to even attempt to locate these or any other witnesses which may have had information regarding Davis's good behavior while incarcerated on death row. If defense counsel was concerned with ODRC's policy regarding employee interviews, they could very easily have subpoenaed the witnesses to the penalty phase hearing and interviewed (or had their mitigation specialist interview) the witnesses when they appeared for court.

10. The failure to conduct this investigation is objectively unreasonable and constitutes ineffective assistance of counsel pursuant to the two prong test in *Strickland v. Washington.*

11. Second Ground for Relief – I read the penalty phase testimony of caseworker Scott Nowak. It is my understanding that Mr. Davis had a number of certificates, and other information about his accomplishments while in prison, work history while in prison, lack of institutional write-ups and security level reductions. It is my opinion that these documents should have been marked as exhibits and introduced at the penalty phase hearing. Demonstrative evidence of Davis' accomplishments and his behavior while in prison would have been important tangible evidence for the trier of fact. The evidence was admissible, available and relevant to whether Davis should be sentenced to death. Submitting a two page summary through Mr. Nowak was incomplete and unpersuasive, particularly when other evidence existed.

12. The failure to present this evidence is objectively unreasonable and constitutes ineffective assistance of counsel pursuant to the two prong test in *Strickland v. Washington.*

13. Third Ground for Relief – I believe defense counsel has a duty to determine, before placing a witness on the stand, whether that witness could potentially harm the defense case and if so, whether that is a risk worth taking. I read the testimony and affidavit of Cynthia Mausser. Given what Ms. Mausser stated in her affidavit and in her testimony at the penalty phase hearing, I would not have called her as a witness. I believe her testimony harmed Mr. Davis's case. Although defense counsel in their opening statement promised otherwise, Ms. Mauser could not say that Davis would never be paroled. To the contrary, she testified that Davis was apt to be paroled and because he had twice been convicted of murder, the streets would not be safe if/when he were ever released.

14. As the Chair of the Board, I find it hard to believe Ms. Mausser would have guaranteed defense counsel during an interview that Mr. Davis would never be paroled. Rather, it stands to reason that Ms. Mausser's affidavit about what she told defense counsel when interviewed about the possibility of Davis' parole is accurate. No single Parole Board Member constitutes a majority so even if she had an opinion on parole, it would not necessarily be shared by others on the Board.

15. The presentation of Cynthia Mausser's testimony is objectively unreasonable and constitutes ineffective assistance of counsel pursuant to the two prong test in *Strickland v. Washington.*

16. Fourth Ground for Relief – Dr. Smith was asked to provide testimony on Davis's psycho-social history and what, if any, psychological disorders he suffered from at the time of the incident. In my opinion, the key question in this penalty phase was whether Mr. Davis would be a danger to anyone in the community if he was paroled. Defense counsel obviously did not prepare Dr. Smith to testify on this issue because he offered no testimony in this regard. Moreover, his testimony had the opposite effect; he opined that the nature of borderline personality disorder is that an inmate does well in a structured setting like prison but not when they have no clear cut structure like a person out in the

community. Given Mr. Davis's prior history, I believe this testimony was harmful and contributed to the panel giving Mr. Davis death.

17. In addition, defense counsel should have gained information from the prior two panels of judges that heard similar testimony and rejected the psychological testimony. In fact, the second panel actually used the psychological testimony to assist them in making their decision that the death penalty was the appropriate sentence. Defense counsel should either have not presented the testimony of Dr. Smith or focused on the future dangerousness issue as addressed by Dr. Smith's affidavit.

18. The presentation of Dr. Bob Smith's testimony is objectively unreasonable and constitutes ineffective assistance of counsel pursuant to the two prong test in *Strickland v. Washington.*

19. Fifth Ground for Relief – Defense counsel had an exhibit notebook with Exhibits A–L, presumably which they intended to introduce into evidence at the penalty phase hearing. However, they only submitted Exhibits J, K, and L. Of the documents not submitted was an affidavit and the mitigation write-ups from four witnesses who were either deceased or were no longer competent to testify. These witnesses had relevant and important historical information to provide about Davis. Although defense counsel initially indicated to the Court that they intended to present the affidavit and mitigation write-ups through the testimony of their mitigation specialist, John Lee, they did not. For reasons unknown, the defense did not call Mr. Lee. Furthermore, they later withdrew their request to have the exhibits introduced.

20. The defendant is to be given great latitude in presenting mitigating factors in a capital sentencing hearing. *See* R.C. 2929.04(C); *State v. Landrum* (1990), 53 Ohio St.3d 107, 115. Moreover, in this case the affiants were unavailable, so under a more lax standard of evidentiary rules the documents were apt to be admissible. Further, the fact that the case was being tried to a three judge panel makes it more likely than not that the affidavit and the mitigation the write-ups would have been admitted into evidence and given the appropriate weight. I believe that the evidence was admissible as substantive evidence and defense counsel should have introduced or at least attempted to introduce this testimony. Moreover, I believe the evidence was relevant and important to the defense case.

21. The failure to present John Lee's testimony and/or the mitigation write-ups and affidavit is objectively unreasonable and constitutes ineffective assistance of counsel pursuant to the two prong test in *Strickland v. Washington.*

22. Sixth Ground for Relief – At the end of Carol Smith's testimony, Judge Nastoff indicated that he prosecuted, and argued for the death penalty, against Ms. Smith's son, Lahray Thompson. Carol Smith is the sister of the Defendant, making Lahray Thompson the Defendant's nephew. Defense counsel indicated that he made the decision long ago not to challenge the judge's connection to Ms. Smith as grounds for recusal.

23. I have reviewed Mr. Davis's affidavit where he states that his attorney never discussed the recusal issue with him. I find this to be problematic. Moreover, I find it deficient performance not to seek recusal of Judge Nastoff based on his affiliation to Ms. Smith. Judge Nastoff sought the death penalty against Mr. Davis's nephew. During that prosecution he heard and cross examined some of the very same mitigation evidence that Davis presented in his case. It would be difficult, if not impossible, to put aside Judge Nastoff's prior opinions about the veracity and strength of the mitigation.

24. Further, as a practical matter, Judge Nastoff was a former prosecutor who litigated capital cases. Strategically he was not likely to favor the defense presentation given his prior employment.

25. The failure to seek Judge Nasthoff's recusal is objectively unreasonable and constitutes ineffective assistance of counsel pursuant to the two prong test in *Strickland v. Washington.*

26. In addition to the aforementioned examples of ineffectiveness, I observed several other deficiencies in defense counsel's representation.

27. The first witness to testify was Francis Weiland from England. Ms. Weiland had important information about Mr. Davis's remorse and how he has rehabilitated himself over time. She had a letter from Mr. Davis addressing his remorse but was prevented from introducing it into evidence because defense counsel did not provide a copy of the letter to the prosecution as required by the Rules of Evidence.

28. I also found Mr. Davis's unsworn statement to be rehearsed and unconvincing. Despite the Sixth Circuit's reason for reversal in the case of *Davis v. Coyle* (6th Cir. 2007), 475 F.3d 761, defense counsel did not ask Davis about his institutional adjustment or achievements. Davis' testimony as to this issue was even more critical in the absence of any ODRC employees being called as witnesses by the defense. Mr. Davis should have been asked to testify about his exemplary behavior in prison, his certificates, work history, etc.

29. All of my opinions are based on my experience, my review of the records in this case and my knowledge of the standard for ineffective assistance of trial counsel under *Strickland v. Washington.* For the reasons stated above, both individually and cumulatively, Von Clark Davis was deprived of the effective assistance of trial counsel under the Ohio and United States Constitutions.

FURTHER AFFIANT SAYETH NAUGHT.

DIANE M. MENASHE

Sworn to and subscribed before me this 21st day of October, 2011.

Notary Public

NOTARIAL SEAL STATE OF OHIO

KORT GATTERDAM, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

STATE OF OHIO	:	CASE NO. CR95-12-1111 -A96-05-0094
Plaintiff FILED	:	STATE OF OHIO COUNTY OF BUTLER
vs. '96 JUL 24 PM 1 10	:	COURT OF COMMON PLEAS (Moser, J.)
T. MARIA EATON CLERK OF COURTS	:	
LAHRAY THOMPSON	:	
Defendant FILED IN THE COURT OF COMMON PLEAS BUTLER COUNTY, OHIO JUL 24 1996	:	MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO ALLOW DEFENSE TO ARGUE LAST AT MITIGATION PHASE

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to allow the defense to argue last in penalty-phase closing arguments, filed herein on April 4, 1996, says that the defendant's motion is not well taken. This motion is "backed by neither law nor effective argument," see *State v. Evans* (1991), 63 Ohio St.3d 231, 251, 586 N.E.2d 1042, 1059.

It is clear that the State bears a very high burden of proof in a criminal case -- proof beyond a reasonable doubt. Accordingly, it was held in *State v. Jenkins* (1984), 15 Ohio St.3d 164, 214-215, 473 N.E.2d 264, 307-308, that the prosecutor should argue first and last in the penalty-phase final arguments, since the State bears the burden of proof in the penalty phase of a capital trial (to prove that the aggravating circumstances outweigh the mitigating factors by proof beyond a reasonable doubt). *See also* *State v. Rogers* (1985), 17 Ohio St.3d 174, 182-183, 478 N.E.2d 984, 993, *State v. Hicks* (1989), 43 Ohio St.3d 72, 80, 538 N.E.2d 1030, 1039, and *State v. Grant* (1993), 67 Ohio St.3d 465, 483, 620 N.E.2d 50, 69.

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EXHIBIT
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'96 JUL 24 (illegible) 10
T. MARK ... CLERK OF COURTS
FILED IN COMMON PLEAS COURT BUTLER COUNTY, OHIO
JUL 24 1996
T. MARK ... CLERK

WHEREFORE, the defendant's motion should be overruled.

Respectfully submitted,

JOHN F. HOLCOMB (0001499)
PROSECUTING ATTORNEY
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PROOF OF SERVICE

This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 24 day of July, 1996.

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STATE OF OHIO : CASE NO. CR95-12-1111
CA96-05-0094

Plaintiff

FILED
'96 JUL 24 PM 1
T. MARK BAUER
CLERK OF COURTS

STATE OF OHIO
COUNTY OF BUTLER
COURT OF COMMON PLEAS
(Moser, J.)

vs.

LAHRAY THOMPSON

Defendant

MEMORANDUM IN OPPOSITION TO DEFENDANT'S "VOIR DIRE MEMORANDUM" RE PROPER STANDARD FOR DEATH-QUALIFICATION EXCUSAL

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's "voir dire memorandum" regarding the proper standard for death-qualification, filed herein on April 4, 1996, says that the defendant's proposition of law is incorrect.

Death-qualification of jurors was upheld as proper in *State v. Jenkins* (1984), 15 Ohio St.3d 164, 473 N.E.2d 264, at paragraph two of the syllabus. The Ohio Supreme Court in *State v. Rogers* (1985), 17 Ohio St.3d 174, 478 N.E.2d 984, *vacated on other grounds* (1985), 474 U.S. 1002, following the standard enunciated in *Wainwright v. Witt* (1985), 469 U.S. 412, 420, established as a matter of Ohio law that a prospective juror in a capital case is subject to challenge for cause based on his views in opposition to capital punishment if "those views would prevent or substantially impair the performance of his duties as juror in accordance with his instructions and his oath." *Rogers*, *id.*, at paragraph three of the syllabus. See also *State v. Beuke* (1988), 38 Ohio St.3d 29,38, 526 N.E.2d 274, 284, and *State v. Greer* (1988), 39 Ohio St.3d 236, 248, 530 N.E.2d 382, 397.

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JUL 24 1995

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The Court has several times reaffirmed its holding in *Rogers*, rejecting the very argument made by defendant herein that the Ohio statute, R.C. 2945.25(C), demands a different, "stricter" standard for death qualification in Ohio, as opposed to the federal constitutional standard. *See, e.g.*, *State v. Roe* (1989), 41 Ohio St.3d 18, 21, 535 N.E.2d 1351, 1357, and most recently, *State v. Frazier* (1995), 72 Ohio St.3d 323, 329, 652 N.E.2d 1000, 1007. The *Rogers* line of cases clearly establish that the standard under the Federal Constitution and the Ohio statute are identical. It has also been held that a juror who is excludable under the *Wainwright v. Witt* or *Rogers* standard is "unsuitable" to be a juror under R.C. 2945.24(O), *see* *State v. Greer*, 39 Ohio St.3d at 248, 530 N.E.2d at 397; *State v. Beuke*, 38 Ohio St.3d at 38, 526 N.E.2d at 284; and *State v. Buell* (1988), 22 Ohio St.3d 124, 139, 489 N.E.2d 795, 808.

The attached death qualification question as asked by this Court in *State v. Benge* (1993), Butler C.P. No. CR93-02-0116, (excerpt from Trial Transcript pp. 52-54), affirmed in *State v. Benge* (Dec. 5, 1994), Butler App. No. CA93-06-116, unreported, is a proper form for applying the *Wainwright v. Witt* / *Rogers* standard.

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JUL 24 1996
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WHEREFORE, the defendant's proposed standard for death-qualification should be rejected, and the attached questioning standard, or similar wording, should be utilized in the voir dire of this case.

Respectfully submitted,

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STATE OF OHIO : CASE NO. CR95-12-1111

FILED
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T. MARK BAKER
CLERK OF COURTS

CA96-05-0094

Plaintiff : STATE OF OHIO
COUNTY OF BUTLER

vs. : COURT OF COMMON PLEAS
(Moser, J.)

LAHRAY THOMPSON

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 24 1996
T. MARK BAKER
CLERK

Defendant : MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTIONS TO LIMIT PROSECUTOR'S EVIDENCE AND ARGUMENT IN THE PENALTY PHASE

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motions as follows:

"MOTION TO LIMIT PROSECUTOR'S ARGUMENT TO THE AGGRAVATING CIRCUMSTANCES PROVEN AT THE FIRST PHASE OF THE TRIAL AND TO LIMIT THE PROSECUTOR'S PRESENTATION OF EVIDENCE AND ARGUMENT TO PROPER REBUTTAL OF THE DEFENSE PRESENTATION."

"MOTION TO LIMIT STATE'S EVIDENCE TO REBUTTAL" and

"MOTION TO ALTER DEFINITION OF MITIGATING CIRCUMSTANCES TO REMOVE REFERENCE TO REDUCING THE DEGREE OF BLAME AND TO SO LIMIT PROSECUTOR IN HIS ARGUMENT"

filed herein on April 4, 1996, and

Defendant's motions seek to severely restrict and limit the prosecutor's penalty-phase argument. However, the Ohio Supreme Court has clearly outlined the range of permissible argument for a prosecutor in the "mitigation" or "penalty" or sentencing" phase of a capital trial, see *State v. Gumm* (1995), 73 Ohio St.3d 413, 653 N.E.2d 253, where the Court held in its syllabus:

> Subject to applicable Rules of Evidence, and pursuant to R.C. 2929.03(D)(1) and (2), counsel for the state at the penalty stage of a

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capital trial may introduce and comment upon (1) any evidence raised at trial that is relevant to the aggravating circumstances specified in the indictment of which the defendant was found guilty, (2) any other testimony or evidence relevant to the nature and circumstances of the aggravating circumstances specified in the indictment of which the defendant was found guilty, (3) evidence rebutting the existence of any statutorily defined or other mitigating factors first asserted by the defendant, (4) the presentence investigation report, where one is requested by the defendant, and (5) the mental examination report, where one is requested by the defendant. Further, counsel for the state may comment upon the defendant's unsworn statement, if any. (R.C. 2929.03[D], construed; *State v. DePew* [1988], 38 Ohio St.3d 275, 528 N.E.2d 542, affirmed and followed.)

Thus, the Court has rejected the argument presented in defendant's motions that the prosecutor must restrict his penalty-phase remarks to a rote, "professorial" outline of the aggravating circumstances specified in the indictment and proven in the guilt phase of trial. Neither the Eighth Amendment nor cases decided by the Ohio or United States Supreme Courts preclude the prosecutor from argument in the penalty phase concerning the nature and circumstances of the murder itself, see *State v. Gumm*, 73 Ohio St.3d at 416-418, 653 N.E.2d at 259-264. Indeed, the statute itself, R.C. 2929.03, requires the sentencing authority (jury and judge, or three-judge panel) to consider the nature and circumstances of the offense, see *Gumm*, *id.* at 418-420, citing *State v. Jenkins* (1984), 15 Ohio St.3d 164, 174, 473 N.E.2d 264, 277-278, *State v. Steffen* (1987), 31 Ohio St.3d 111, 116-117, 509 N.E.2d 383, 390, and *State v. Stumpf* (1987), 32 Ohio St.3d 95, 99, 512 N.E.2d 598, 604. The Court also noted that "it is only by considering the nature and circumstances of the offense, as

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JUL 24 1996
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well as the statutory aggravating circumstances, that it is possible "to prevent a rigid and mechanistic sentencing scheme." *Gumm*, *id.* at 420, citing *State v. Jester* (1987), 32 Ohio St.3d 147, 153, 512 N.E.2d 962, 969; and in *Gumm* it was also noted that "some crimes are by their very nature so 'horrendous' or 'harrowing' that it would be difficult to imagine factors that might be mitigating," *Gumm*, *id.*, citing *State v. Morales* (1987), 32 Ohio St.3d 252, 262, 513 N.E.2d 267, 277, and *Steffen*, *supra* at 128, 509 N.E.2d at 398. The Court in *Gumm* reasoned that in *DePew* it was held that a prosecutor in the penalty stage of a capital case may introduce, and comment upon, any evidence raised at trial that is relevant to the aggravating circumstances, which allows the prosecutor to reintroduce much if not all of the evidence heard in the guilt phase; and in many cases it has been held that once lawfully inserted into the sentencing considerations, admissible evidence is subject to fair comment by both parties, see, e.g., *State v. Greer* (1988), 39 Ohio St.3d 236, 253, 530 N.E.2d 382, 402, and *State v. Lorraine* (1993), 66 Ohio St.3d 414, 420, 613 N.E.2d 212, 218. The Court in *Gumm* cautioned prosecutors (and trial courts in their instructions and sentencing opinions) to avoid imprecise designation of the "nature and circumstances of the offense" as "aggravating circumstances" to be "weighed against" the mitigating factors, *cf. State v. Davis* (1988), 38 Ohio St.3d 361, 367-368, 528 N.E.2d 925, 931-932. However, so long as the prosecutor does not confuse "aggravating circumstances" with the nature and circumstances of the

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T. MARK GARDEN
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aggravated murder, he is perfectly within the proper bounds of final argument to comment on the nature and circumstances of the aggravated murder which are relevant to the sentencing considerations.

Gumm also holds that it is permissible to comment on the defendant's unsworn statement, see syllabus in *Gumm*; see also *State v. Mapes* (1985), 19 Ohio St.3d 108, 115-116, 484 N.E.2d 140, 147 ("If a defendant chooses to make an unsworn oral statement to the jury, the prosecution should be allowed to argue that the defendant's statement has less credibility because it is not given under oath. *** [T]he state should be able to dispute the weight of that statement ***.").

Defendant's suggestion that the prosecutor may not comment on relevant aspects of the murder victim's character which have been admitted in evidence in either the guilt or penalty phase of trial is an argument that has been rejected by unanimous decisions of the Ohio Supreme Court in *State v. Loza* (1994), 71 Ohio St.3d 61, 82, 641 N.E.2d 1082, 1105, and *State v. Fautenberry* (1995), 72 Ohio St.3d 435, 438-440, 650 N.E.2d 878, 881-882. The Court in *Fautenberry* noted the fact that the cases on which defendant's argument relies, *Booth v. Maryland* (1987), 482 U.S. 496, and *South Carolina v. Gathers* (1989), 490 U.S. 805, were overruled in *Payne v. Tennessee* (1991), 501 U.S. 808, which held that the Eighth Amendment erects no *per se* bar to the admission of victim-impact evidence. Thus, in *Fautenberry* the Ohio Supreme Court held that "evidence which depicts *both* the

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JUL 24 1996
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circumstances surrounding the commission of the crime and also the impact of the murder on the victim's family may be admissible during both the guilt and the sentencing phases." *Id.* (Emphasis per the Court in *Fautenberry*.) The Court cited *State v. Loza* as an example where evidence relating to victim-impact (*e.g.*, the fact that one of the victims was pregnant, that the killings represented "many years" of potential life expectancy) was admissible in the guilt phase of trial as facts surrounding the offense, and thus comments by the prosecutor in the sentencing phase relating to such victim-impact evidence was permissible. The Court in *Fautenberry* carefully pointed out that expressions of a witness's opinion as to the appropriate sentence, *e.g.*, that the victim's family desires that defendant be sentenced to death (as allowed by statute in most non-capital cases pursuant to R.C. 2943.041) are not admissible in a capital case. *Fautenberry*, 72 Ohio St.3d at 439, 650 N.E.2d at 882; *accord*, *State v. Huertas* (1990), 51 Ohio St.3d 22, 553 N.E.2d 1058, syllabus. However, the Court in *Fautenberry* specifically allowed testimony from the victim's family members and employer concerning the impact of the victim's death on his survivors. *Fautenberry*, *id.* at 438-439, 650 N.E.2d at 881-882.

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WHEREFORE, the defendant's motions should be denied.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 24th day of July, 1996.

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STATE OF OHIO : CASE NO. CR95-12-1111
CA96-05-0094

Plaintiff : STATE OF OHIO
COUNTY OF BUTLER
vs. COURT OF COMMON PLEAS
(Moser, J.)

LAHRAY THOMPSON

Defendant : MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT REFERENCES TO THE JURY THAT A VERDICT AS TO DEATH IS ONLY A RECOMMENDATION

: : : : : : : : : : : : :

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to prohibit refernces to the jury that a verdict as to death is a nonbinding recommendation, filed on April 4, 1996, says that defendant's motion is not well taken. Defendant's argument has been rejected numerous times by the Ohio Supreme Court. In *State v. Jenkins* (1984), 15 Ohio St.3d 164, 473 N.E.2d 264, at paragraph six of the syllabus, the Court held,

> The jury in the penalty phase of a capital prosecution may be instructed that its recommendation to the court that the death penalty be imposed is not binding and that the final decision as to whether the death penalty shall be imposed rests with the court.

This Court in the trial of another capital case gave the following instruction, in *State v. Williams*, Butler Common Pleas No. CR90-08-0665:

> "It is going to be your responsibility *** to decide what sentence to recommend to this Court regarding the charge of aggravated murder with Specifications ***.
>
> "I have used the word 'recommend' and I want you to make sure that you understand you are not to construe that word to diminish your responsibility in this matter. It is an awesome task, and the fact that the word 'recommend' is used should not be considered by you to lessen your task." (Trial Transcript in *Williams*, Vol. XI, page 200, copy attached.)

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The conviction and death sentence in that case were affirmed with approval of that instruction, see *State v. Williams* (Nov. 20, 1992), Butler App. No. CA91-04-060, unreported, at pages 13-15, affirmed, *State v. Williams* (1995), 73 Ohio St.3d 153, 652 N.E.2d___ (the issue was not even raised in the Supreme Court).

A similar instruction in *State v. Mills* (1992), 62 Ohio St.3d 357, 375, 582 N.E.2d 972, 988, that told the jury that "you should recommend the appropriate sentence as though your recommendation will, in fact, be carried out," and the Ohio Supreme Court stated, "we commend the trial judge for his instruction."

Since *Jenkins*, while the Court has held that such instruction accurately states Ohio law and does not constitute reversible error, it has also stated its "preference" that no comment be made on the question of who bears the ultimate responsibility for determining the appropriateness of a death sentence. *See, e.g., State v. Loza* (1994), 71 Ohio St.3d 61, 73-74, 641 N.E.2d 1082, 1099; *State v. Henderson* (1988), 39 Ohio St.3d 24, 30; 528 N.E.2d 1237, 1243; *State v. Williams* (1986), 23 Ohio St.3d 16, 21-22, 490 N.E.2d 906, 912; and *State v. Steffen* (1987), 31 Ohio St.3d 111, 113-114, 509 N.E.2d 383, 387-388. The instruction given by this Court in the *Williams* trial is not only an accurate statement of Ohio law but also ensures that the jury takes its responsibility very seriously. The State therefore requests that the same instruction be given herein, as approved by the Court of Appeals and "commended" by the Supreme Court in *Mills*.

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FILED JUL 24 1996
'96 JUL 24 PM 1 16

WHEREFORE, the defendant's motion should be overruled.

Respectfully submitted,

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This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 24 day of July, 1996.

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STATE OF OHIO : CASE NO. CR95-12-1111

CA96-05-0094

Plaintiff : STATE OF OHIO

'96 JUL 24 PM 1 16 : COUNTY OF BUTLER

vs. : COURT OF COMMON PLEAS

T. [illegible] EATEN
CLERK OF COURTS
[illegible] COUNTY, OHIO : (Moser, J.)

LAHRAY THOMPSON

: MEMORANDUM IN OPPOSITION TO

Defendant JUL 24 1996 : DEFENDANT'S REQUESTED

: PRE-VOIR DIRE JURY INSTRUCTIONS

: : : : : : : : : : : : :

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's requested pre-voir dire jury instructions, filed herein on April 4, 1996, says that the defendant's motion is proper in general, in that preliminary remarks about the procedures involved in a capital case are appropriate; however, the prosecution objects to the defendant's proposed instructions, and says that the preliminary instructions and remarks as given by this Court in *State v. Benge* (1993), Butler C.P. No. CR93-02-0116, affirmed in *State v. Benge* (Dec. 5, 1994), Butler App. No. CA93-06-116, unreported, are tested, correct instructions on the concepts which should be addressed in commencement of the voir dire in a capital case. (Certain minor modifications would be in order inasmuch as there is no longer a "special venire" for capital cases after repeal of former R.C. 2945.18 and 2945.19.)

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JUL 24 1996
CLERK

WHEREFORE, the defendant's motion should be granted in part, defendant's proposed instructions should be rejected, and instructions as given in *State v. Benge*, or similar preliminary remarks, should be given.

Respectfully submitted,

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STATE OF OHIO	:	CASE NO. CR95-12-1111 CA96-05-0094
Plaintiff	:	STATE OF OHIO
vs.	:	COUNTY OF BUTLER COURT OF COMMON PLEAS (Moser, J.)
LAHRAY THOMPSON	:	
Defendant	:	MEMORANDUM IN RESPONSE TO DEFENDANT'S "VOIR DIRE MEMORANDUM" RE "THE DEFENSE MUST BE ALLOWED TO EXAMINE PROSPECTIVE JURORS REGARDING THEIR VIEWS ON CAPITAL PUNISHMENT PRIOR TO THEIR EXCUSAL"

FILED '96 JUL 24 PM 1 15 T. HALEY BRYAN CLERK OF COURTS BUTLER COUNTY, OHIO JUL 24 1996 T. HALEY BRYAN CLERK

Now comes John F. Holcomb, Prosecuting Attorney, and in response to the defendant's "voir dire memorandum" regarding defense examination of prospective jurors as to their views on capital punishment prior to excusal, filed herein on April 4,1996, says that the defendant's proposition of law is correct in part.

The State would agree that "reasonable examination" of prospective jurors by counsel for both sides should be allowed, as provided in R.C. 2945.27; Crim.R. 24(A) also provides that counsel be given an opportunity to voir dire prospective jurors or supplement the court's voir dire examination. *Accord*, *State v. Heurtas* (1990), 51 Ohio St.3d 22, 29-30, 553 N.E.2d 1058, 1067, (explaining that while it would have been "better practice" for the court to allow defense counsel to voir dire a prospective juror before she was excused for cause, her unequivocal statement that she could never vote for the death penalty under any circumstance was, in itself, sufficient basis for her removal). The scope of voir dire is within the sound discretion of the trial court, and the judgment will not be

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JUL 24 1996
FILED
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reversed absent a showing that the trial court abused its discretion in restricting the scope of voir dire, *see* *Heurtas*, *id.*, *State v. Jenkins* (1984), 15 Ohio St.3d 164, 186, 473 N.E.2d 264, 286, and *State v. Lundgren* (1995), 73 Ohio St.3d 474, 481, 653 N.E.2d 304, 315. Restrictions on voir dire have generally been upheld, *see* *Lundgren*, *id.*, and numerous cases cited therein.

The fact that latitude is allowed counsel, however, does not mean that a juror whose views on capital punishment renders him subject to challenge for cause because "those views would prevent or substantially impair the performance of his duties as juror in accordance with his instructions and his oath," *see* *Wainwright v. Witt* (1985), 469 U.S. 412, 420, can be fully "rehabilitated" by further examination of defense counsel. "If a trial court finds that a juror has expressed unwillingness to follow the court's instructions, the ability of defense counsel to elicit somewhat contradictory views from the juror does not, in and of itself, render the trial court's judgment [to exclude the juror for cause] erroneous." *State v. Frazier* (1995), 72 Ohio St.3d 323, 328, 652 N.E.2d 1000, 1007; *State v. Beuke* (1988), 38 Ohio St.3d 29, 38, 526 N.E.2d 274, 284.

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'96 JUL 24 PM 1 15
CLERK OF COURTS

WHEREFORE, the defendant's motion that his counsel be permitted to make reasonable examination of prospective jurors in the discretion of the Court, pursuant to R.C. 2945.27, Crim.R. 24(C), and Ohio case law, should be granted.

Respectfully submitted,

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PROOF OF SERVICE

JUL 24 1996
FILED
CLERK
'96 JUL 24 PM 1 15

This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 24 day of July, 1996.

DANIEL J. GATTERMEYER (0031305)
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STATE OF OHIO	:	CASE NO. CR95-12-1111
	FILED	CA96-05-0084
Plaintiff	:	STATE OF OHIO
	'96 JUL 11 PM 2 47	COUNTY OF BUTLER
vs.	:	COURT OF COMMON PLEAS
	T. MARK BAGLEY CLERK OF COURTS	(Moser, J.)
LAHRAY THOMPSON	:	
Defendant	FILED In Common Pleas Court BUTLER COUNTY, OHIO JUL 11 1996 T. MARK BAGLEY CLERK	MEMORANDUM IN RESPONSE TO DEFENDANT'S "VOIR DIRE MEMORANDUM" RE "VENIRE PERSONS WHO CANNOT FAIRLY CONSIDER MITIGATING EVIDENCE AND WHO WOULD AUTOMATICALLY VOTE FOR DEATH UPON A SHOWING OF GUILT MUST BE EXCUSED"
: : : : : : : : : : : : :	:	

Now comes John F. Holcomb, Prosecuting Attorney, and in response to the defendant's "voir dire memorandum" regarding "venire persons who cannot fairly consider mitigating evidence and who would automatically vote for death upon a showing of guilt must be excused," filed herein on April 4, 1996, says that the defendant's *initial* proposition of law, as stated in the motion's heading, is correct *in the abstract*. The State would agree with the defendant that it is the purpose of voir dire to obtain fair, unbiased jurors who will have no difficulty following the law applicable in this case, in particular the Ohio statutes involving procedure in capital cases, R.C. 2929.03-2929.04. A person who in voir dire states that he or she cannot fairly consider mitigating evidence and who would automatically vote for death upon a showing of guilt, and thus would be unable to follow the penalty-phase jury instructions, is "unsuitable" to be a juror, R.C. 2945.24(O).

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This is not to say, however, that the prosecution accepts defendant's formulation that the defense should be allowed to show bias in favor of imposing the death penalty "circumstantially," by asking prospective jurors whether they may feel that certain specific mitigating factors such as "youth," "history, character and background," would carry some, little, or no weight in a sentencing decision. In *State v. Lundgren* (1995), 73 Ohio St.3d 474, 481, 653 N.E.2d 304, 315, the Ohio Supreme Court rejected the defendant's assumption that jurors may be voir-dired in such a way, finding that a trial court had "exercised appropriate discretion in not allowing jurors to be asked if they would consider specifically named mitigating factors." The Court in *Lundgren* reasoned that

> "weighing aggravating circumstances against mitigating factors is a complex process. Jurors weigh mitigating factors together, not singly, and do so collectively as a jury in the context of a penalty hearing. Realistically, jurors cannot be asked to weigh specific factors until they have heard all the evidence and been fully instructed on the applicable law. Moreover, 'evidence of an offender's history, character and background' that is not found to be mitigating 'need be given little or no weight against the aggravating circumstances.' *State v. Stumpf* (1987), 32 Ohio St.3d 95, 512 N.E.2d 598, paragraph two of the syllabus."

Lundgren, *id.* at 481, 653 N.E.2d at 315.

The defense motion is also premature, in that it anticipates possible responses of potential jurors that may never arise. The question must be determined with each juror on a case-by-case basis, and not in the abstract; there are many cases where jurors were alleged to be "pro-death" because of certain statements about consideration of mitigating evidence in the abstract, yet they were found to be qualified jurors who would fairly and impartially

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consider all the evidence and follow the instructions of law, *see* Lundgren, *id.* "Their inability to conjure abstract mitigating factors does not reflect an inability to to be fair and impartial jurors." Lundgren, *id.* at 483, 653 N.E.2d at 316. *See also* State v. Mack (1995), 73 Ohio St.3d 502, 509-510, 653 N.E.2d 329, 335-336 (trial court did not abuse its discretion by refusing to remove for cause potential jurors with initial predisposition toward imposition of death penalty, but who later stated they would follow trial instructions).

WHEREFORE, the defendant's suggestion that his counsel be permitted to ask prospective jurors if they would consider specifically named mitigating factors should be denied, and jurors's qualifications should be determined in accordance with the foregoing memorandum.

Respectfully submitted,

JOHN F. HOLCOMB (0001499)
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This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 11th day of July, 1996.

Daniel J. Gattermeyer

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FILED
'96 JUL 11 PM 2 49
T. MARK BADER
CLERK OF COURTS

STATE OF OHIO : CASE NO. CR95-12-1111

CA96-05-0094

Plaintiff : STATE OF OHIO
COUNTY OF BUTLER
vs. COURT OF COMMON PLEAS
(Moser, J.)

LAHRAY THOMPSON

FILED In Common Pleas Court
BUTLER COUNTY, OHIO
JUL 11 '96
MARK BADER
CLERK

Defendant : MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT DEATH QUALIFICATION OF JURY, ETC.

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to prohibit death qualification of the jury or, in the alternative, to seat separate juries for the guilt and penalty phases of trial, filed herein on April 4, 1996, says that the defendant's arguments are not well taken.

Defendant's motion lacks merit on each of its propositions. It is clear that death-qualification of jurors is constitutionally proper, see *State v. Jenkins* (1984), 15 Ohio St.3d 164, 473 N.E.2d 264, paragraph two of the syllabus; see also *State v. Grant* (1993), 67 Ohio St.3d 465, 476, 620 N.E.2d 50, 64.

It is also clear that separate juries *cannot* be seated for the penalty and guilt phases of a capital trial in Ohio, where by statute the same trial jury which determines guilt *must* also make a recommendation of punishment. *State v. Carter* (1995), 72 Ohio St.3d 545, 559-560, 651 N.E.2d 965, 978, citing *State v. Penix* (1987), 32 Ohio St.3d 369, 372, 513 N.E.2d 744, 747-748.

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WHEREFORE, the defendant's motion should be overruled.

Respectfully submitted,

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STATE OF OHIO : CASE NO. CR95-12-1111

Plaintiff

vs.

LAHRAY THOMPSON

Defendant

FILED
'96 JUL 11 PM 2:50
STATE OF OHIO
COUNTY OF BUTLER
COURT OF COMMON PLEAS
(Moser, J.)

CA96-05-0094

FILED In Common Pleas Court BUTLER COUNTY, OHIO
JUL 11 1996
T. MARK BADEN CLERK

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT THE USE OF PEREMPTORY CHALLENGES TO EXCLUDE JURORS WHO EXPRESS CONCERNS ABOUT CAPITAL PUNISHMENT

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion requesting that this Court prohibit the State from excluding, through the use of peremptory challenges, any jurors who express concerns about capital punishment, filed herein on April 4,1996, says that the defendant's argument is without merit.

"Aside from racial exclusion, prosecutors can exercise a peremptory challenge for any reason, without inquiry, and without a court's control." *State v. Seiber* (1990), 56 Ohio St.3d 4, 13, 564 N.E.2d 408, 419, citing *State v. Esparza* (1988), 39 Ohio St.3d 8, 13-14, 529 N.E.2d 192, 198 (both cases expressly rejecting the argument made by defendant herein). The Ohio Supreme Court has rejected defendant's proposition repeatedly since the *Esparza* and *Seiber* decisions, see *State v. Evans* (1992), 63 Ohio St.3d 231, 249, 586 N.E.2d 1042, 1057; *State v. Waddy* (1992), 63 Ohio St.3d 424, 451 n.11, 588 N.E.2d 819, 839; *State v. Cook* (1992), 65 Ohio St.3d 516, 518, 605 N.E.2d 70, 76; *State v. Slagle*

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(1992), 65 Ohio St.3d 597, 600, 605 N.E.2d 916, 922; and *State v. Williams* (1995), 73 Ohio St.3d 153, 168, 652 N.E.2d 721, 734. Federal courts facing this issue have also rejected the defense argument, *see, e.g., Brown v. Dixon* (CA 4, 1989), 891 F.2d 490, 496-498 (cited by the Ohio Supreme Court in *Waddy*), *Bolder v. Armentrout* (W.D.Mo. 1989), 713 F.Supp. 1558, 1576-1577, and *Kordenbrock v. Scroggy* (E.D.Ky. 1988), 680 F.Supp. 867, 911-912.

The limitation on peremptory challenges as set forth in *Batson v. Kentucky* (1986), 476 U.S. 79, would require that peremptory challenges not be used to exclude a member of a particular minority (racial or ethnic) for discriminatory purpose. Other than the limitation established in *Batson*, however, it is "the ordinary rule that a prosecutor may use his peremptory strikes for any reason at all." *Brown v. North Carolina* (1986), 479 U.S. 940 (O'Connor, J., concurring in denial of certiorari). Thus, aside from *Batson*, the right of peremptory challenge is entirely discretionary; a plurality of the United States Supreme Court would apparently agree that "nothing in *Batson* suggests that courts may examine a prosecutor's motives whenever he has excluded peremptorily those whom the court may not remove for cause." *Gray v. Mississippi* (1987), 481 U.S. 648, 672 (Powell, J., concurring opinion, in which three other justices concurred; see also *id.*, 481 U.S. at 679-680 (Scalia, J., dissenting opinion).

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WHEREFORE, the defendant's motion should be overruled.

Respectfully submitted.

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STATE OF OHIO : CASE NO. CR95-12-1111

CA96-05-0094

Plaintiff STATE OF OHIO
COUNTY OF BUTLER
COURT OF COMMON PLEAS

vs. (Moser, J.)

LAHRAY THOMPSON

Defendant

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT ANY REFERENCES TO THE FIRST PHASE AS THE "GUILT PHASE"

FILED
'96 JUL 11 PM 2:43
T. MARK BADEN
CLERK OF COURTS
FILED In Common Pleas Court
BUTLER COUNTY, OHIO
JUL 11 1996
T. MARK BADEN
CLERK

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Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to prohibit any reference to the first stage of trial as the "guilt phase", filed herein on April 18, 1996, says that the defendant's motion is not well taken.

Defendant's motion is backed by neither law nor effective argument. It is implausible that reference to the first stage of a capital trial where the issue of guilt *vel non* is determined will influence the jury's verdict, *see* *State v. Campbell* (1994), 69 Ohio St.3d 38, 51, 630 N.E.2d 339, 352. The Court and parties will refer to this stage of trial as "the guilt phase," if at all, in a context of explaining in voir dire that there will be two separate parts of the trial, the first of which determines whether defendant is guilty or not guilty of aggravated murder, with or without specifications, or guilty or not guilty of any other offenses charged or any lesser included offenses.

It would be quite inaccurate to label this stage of the proceedings the "trial phase" or "evidentiary phase" inasmuch as it takes *both* phases to constitute the "trial," and evidence is to be recieved at both phases. The

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defense suggestion that this be labeled the "fact-finding" stage, aside from being unwieldy, is likewise inaccurate as the jury in determining sentence in the second stage of the proceedings will also determine whether the proffered mitigating evidence is "fact."

WHEREFORE, the defendant's motion should be overruled.

Respectfully submitted,

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This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 11th day of July, 1996.

Daniel J. Gattermeyer

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STATE OF OHIO : CASE NO. CR95-12-1111

FILED
'96 JUL 11 PM 2 41
T. MARK BADEN
CLERK BUTLER COUNTY

CA96-05-0094

Plaintiff STATE OF OHIO

Filed in Common Pleas Court
BUTLER COUNTY, OHIO

vs. COUNTY OF BUTLER
COURT OF COMMON PLEAS
(Moser, J.)

JUL 11 1996
T. MARK BADEN
CLERK

LAHRAY THOMPSON

Defendant : MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT DEATH QUALIFICATION UNTIL PROSECUTION SHOWS PROBABLE CAUSE THAT CASE WILL PROCEED TO MITIGATION

: : : : : : : : : : : : :

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to prohibit death qualification of the jury unless and until the prosecution has shown probable cause that the case will proceed to mitigation phase, filed herein on April 4, 1996, says that defendant's argument is not well taken. While defendant's ploy is to eliminate death-qualification of jurors altogether, it is well-established that death qualification is constitutionally proper, see *State v. Jenkins* (1984), 15 Ohio St.3d 164, 473 N.E.2d 264, paragraph two of the syllabus; see also *State v. Grant* (1993), 67 Ohio St.3d 465, 476, 620 N.E.2d 50, 64. The United States Supreme Court has refused to accept the argument that the exclusion of "*Witherspoon*-excludables" (jurors whose opposition to capital punishment makes them unable to fairly sit as jurors and apply the law) results in an unrepresentative jury on the issue of guilt or increases the risk of conviction. *Lockhart v. McCree* (1986), 476 U.S. 816; see also *Witherspoon v. Illinois* (1968), 391 U.S. 510, 517-518, and *Bumper v. North Carolina* (1968, 391 U.S. 543, 545.

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Before enactment of the current death penalty statutes, the proposition that a voir dire procedure conducted pursuant to *Witherspoon* would result in a conviction-prone jury was rejected by the Ohio Supreme Court in *State v. Carver* (1972), 30 Ohio St.2d 280, 59 O.O.2d 343, 285 N.E.2d 26, where the Court reasoned that such a procedure would not have imbedded in the minds of the jurors that defendant was guilty and that they will merely be determining the penalty. *Id.* In *State v. Jenkins*, the Court re-examined the issue and specifically held, at paragraph two of the syllabus, "to death qualify a jury prior to the guilt phae of a bifurcated capital prosecution does not deny a capital defendant a trial by an impartial jury."

Defendant's only citation in support of his proposition was *Grigsby v. Mabry* (E.D.Ark. 1983), 569 F.Supp. 1273; defendant fails to note, however, that the result in *Grigsby* was nullified by the United States Supreme Court in *Lockhart v. McCree*, *supra*.

The defendant engages in the absurd assumption that the State would "secure a capital indictment for the sole purpose of enhancing the chances of conviction." (*Sic*, Defense Memorandum at page 4.) This derogates the role of the grand jury in determining probable cause for the charges set forth in the indictment, as well as personally insults the prosecutors in this case. There should rather be a presumption that the grand jurors and prosecutors competently and faithfully performed their legal and ethical duties, contrary to the defendant's assumption that they did not.

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Failing in his argument to block death-qualification of the jury, defendant in the alternative seeks, in effect, a second "preliminary hearing" at which the prosecution should again establish probable cause that the defendant is guilty of aggravated murder in violation of R.C. 2903.01 with one of more R.C. 2929.04(A) specifications. This should be denied, for the reason that no such redundant procedure is provided for in the Ohio statutes or procedural rules governing capital trials, and the Court cannot create a procedure from the void, see *State v. Penix* (1987), 32 Ohio St.3d 369, 372-373, 513 N.E.2d 744, 747-748 (where no statutory procedure to reimpanel the trial jury for a resentencing hearing after reversal on appeal, "we may not create such a procedure out of whole cloth").

WHEREFORE, the defendant's motion should be denied.

Respectfully submitted,

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This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 11th day of July, 1996.

DANIEL J. GATTERMEYER (0031305)
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STATE OF OHIO	:	CASE NO. CR95-12-1111
	FILED	CA96-05-0094
Plaintiff	:	STATE OF OHIO
	'96 JUL 11 PM 2	COUNTY OF BUTLER
vs.	:	COURT OF COMMON PLEAS
	T. MARK BADEN	(Moser, J.)
	CLERK OF COURTS	
LAHRAY THOMPSON	FILED In Common Pleas Court BUTLER COUNTY, OHIO	
	:	MEMORANDUM IN OPPOSITION TO
Defendant	JUL 11 1996	DEFENDANT'S MOTION TO STRIKE AGGRAVATING CIRCUMSTANCES
	T. MARK BADEN CLERK	
: :		: : : : : : : : :

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to strike aggravating circumstances under R.C. 2929.04(A)(3), (7) filed herein on April 4, 1996, says that the defendant's arguments are not well taken.

Defendant's argument is nothing more than an attack on the constitutionality of the Ohio death penalty statutes. The Supreme Court of Ohio has repeatedly rejected such arguments and has held the death penalty statutes constitutional in many of the more than one hundred capital cases decided by the Court, from the detailed analysis in *State v. Jenkins* (1984), 15 Ohio St.3d 164, 167-179, 473 N.E.2d 264, 272-281, and at paragraph one of the syllabus, through the more recent summary dispositions of this issue in *State v. Loza* (1994), 71 Ohio St.3d 61, 84, 641 N.E.2d 1082, 1106, and most recently, *State v. Fautenberry* (1995), 72 Ohio St.3d 435, 443, 650 N.E.2d 878, 885, and *State v. Carter* (1995), 72 Ohio St.3d 545, 560-561, 651 N.E.2d____.

Summary disposition of these time-worn arguments is appropriate; this Court, like the Ohio Supreme Court, should not "waste its valuable judicial

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resources discussing what continues as well-settled law," *State v. Lawson* (1992), 64 Ohio St.3d 336, 351, 595 N.E.2d 902, 913. *See also State v. Hawkins* (1993), 66 Ohio St.3d 339, 342-343, 612 N.E.2d 1227, 1230; *State v. Bonnell* (1991), 61 Ohio St.3d 179, 181, 573 N.E.2d 1082, 1085; and *State v. Poindexter* (1988), 36 Ohio St.3d 1, 3-4, 520 N.E.2d 568, 571.

WHEREFORE, the defendant's motions should be overruled.

Respectfully submitted,

JOHN F. HOLCOMB (0001499)
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PROOF OF SERVICE

This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 11th day of July, 1996.

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STATE OF OHIO : CASE NO. CR95-12-1111

CA96-05-0094

Plaintiff : STATE OF OHIO

FILED
'96 JUL 11 PM 2 47
T. MARK DAVIS
CLERK OF COURTS

: COUNTY OF BUTLER

vs. : COURT OF COMMON PLEAS

: (Moser, J.)

LAHRAY THOMPSON

Filed in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 11 1996
MARK BADER
CLERK

Defendant : MEMORANDUM IN OPPOSITION TO DEFENDANT'S CONSTITUTIONAL MOTION TO DISMISS

: : : : : : : : : : : :

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's constitutional motion to dismiss filed herein on April 18, 1996, says that the defendant's arguments are not well taken.

Defendant's argument engages in a general attack on the constitutionality of the Ohio death penalty statutes. The Supreme Court of Ohio has repeatedly rejected such arguments and has held the death penalty statutes constitutional in many of the more than one hundred capital cases decided by the Court, from the detailed analysis in *State v. Jenkins* (1984), 15 Ohio St.3d 164, 167-179, 473 N.E.2d 264, 272-281, and at paragraph one of the syllabus, through the more recent summary dispositions of this issue in *State v. Loza* (1994), 71 Ohio St.3d 61, 84, 641 N.E.2d 1082, 1106, *State v. Fautenberry* (1995), 72 Ohio St.3d 435, 443, 650 N.E.2d 878, 885, and *State v. Carter* (1995), 72 Ohio St.3d 545, 560, 651 N.E.2d 965, 979.

Summary disposition of these time-worn arguments is appropriate; this Court, like the Ohio Supreme Court, should not "waste its valuable judicial resources discussing what continues as well-settled law," *State v. Lawson* (1992),

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64 Ohio St.3d 336, 351, 595 N.E.2d 902, 913. *See also* *State v. Hawkins* (1993), 66 Ohio St.3d 339, 342-343, 612 N.E.2d 1227, 1230; *State v. Bonnell* (1991), 61 Ohio St.3d 179, 181, 573 N.E.2d 1082, 1085; and *State v. Poindexter* (1988), 36 Ohio St.3d 1, 3-4, 520 N.E.2d 568, 571.

WHEREFORE, the defendant's motion to dismiss should be overruled.

Respectfully submitted,

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Daniel J. Gattermeyer

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STATE OF OHIO	:	CASE NO. CR95-12-1111
	FILED	CA96-05-0094
Plaintiff	:	STATE OF OHIO
	'96 JUL 11 PM 2 43	COUNTY OF BUTLER
vs.	:	COURT OF COMMON PLEAS
	T. MARK BADER CLERK OF COURTS	(Moser, J.)
LAHRAY THOMPSON		MEMORANDUM IN RESPONSE TO DEFENDANT'S MOTION TO COMPEL PROSECUTING ATTORNEY TO DISCLOSE DEATH PENALTY DATA
Defendant	FILED In Common Pleas Court BUTLER COUNTY, OHIO JUL 11 '96 T. MARK BADER CLERK	

Now comes John F. Holcomb, Prosecuting Attorney, and in response to the defendant's motion to compel the Prosecuting Attorney to disclose death penalty data, filed herein on April 18, 1996, says as follows:

Defendant's motion is based on a faulty premise and is not well taken. First of all, the trial court does not engage in the type of proportionality review of the case at bar with other cases as contemplated by R.C. 2929.05(A), which is strictly an undertaking of the appellate and Supreme Courts. Secondly, the idea that any court (trial, appellate, or Supreme Court) will consider cases in which the death penalty was not imposed for comparative proportionality review purposes, is simply wrong. *See* *State v. Fautenberry* (1995), 72 Ohio St.3d 435, 443, 650 N.E.2d 878, 885, (rejecting the so-called "lucky ten" argument, that others in the jurisdiction of the court were similarly indicted and/or convicted of aggravated murder and aggravated robbery but failed to receive the death penalty), citing *State v. Sowell* (1988), 39 Ohio St.3d 322, 335, 530 N.E.2d 1294, 1308, *State v. Steffen* (1987), 31 Ohio St.3d 111, 123-124, 509 N.E.2d 383, 394-395, and *State v. Jenkins* (1984), 15 Ohio St.3d 164, 209, 473 N.E.2d 264, 304.

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Moreover, defendant's request for cases in which the death penalty was not imposed, such cases are not utilized in the appellate and Supreme Court's proportionality review under R.C. 2929.05(A), see *State v. Steffen*, supra, at paragraph one of the syllabus.

The Prosecuting Attorney therefore responds to the defendant's request with the following answer: to the knowledge of the Prosecuting Attorney, those cases in the Twelfth Appellate District in which the death penalty has been imposed and affirmed by that court are as follows.

State v. Davis (May 27, 1986), Butler App. No. CA84-06-071, unreported, *remanded for resentencing*, (1988), 38 Ohio St.3d 361, sentence affirmed in ***State v. Davis*** (Oct. 29, 1990), Butler App. No. CA89-09-123, unreported, *affirmed*, (1992), 63 Ohio St.3d 44;
State v. Depew (June 29, 1987), Butler App. No. CA85-07-075, unreported, *affirmed*, (1988), 38 Ohio St.3d 275;
State v. Watson (Mar. 31, 1989), Butler App. No. CA88-01-0`4, unreported, *death sentence reversed*, (1991), 61 Ohio St.3d 1
State v. Lawson (June 4, 1990), Clermont App. No. CA88-05-044, unreported, *affirmed*, (1992), 64 Ohio St.3d 336;
State v. Williams (Nov. 2, 1992), Butler App. No. CA91-04-060, unreported, *appeal now pending*, Case No. 93-007;
State v. Loza (Apr. 19, 1993), Butler App. No. CA91-11-198, unreported, *affirmed*, (1994), 71 Ohio St.3d 61;
State v. Webb (May 24, 1993), Clermont App. No. CA91-08-053, unreported, *affirmed*, (1994), 70 Ohio St.3d 325; and
State v. Benge (Dec. 5, 1994), Butler App. No. CA93-06-116, unreported, *appeal now pending*, Case No. 95-112.

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Wherefore, except as answered above, the defendant's motion should be denied.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that a copy of the foregoing Memorandum was sent to Ronald C. Morgan, 110 N. Third St. Hamilton, Ohio 45011, and Lynn Cunningham, 616 Dayton St., Hamilton, Ohio 45011 by U.S. regular mail this 11th day of July, 1996.

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STATE OF OHIO : CASE NO. CR95-12-1111

CA96-05-0094

Plaintiff : STATE OF OHIO

FILED
'96 JUL 11 PM 2 [illegible]
T. MARK BADER
CLERK OF COURTS

vs. : COUNTY OF BUTLER
COURT OF COMMON PLEAS
(Moser, J.)

LAHRAY THOMPSON

Defendant

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO PROHIBIT ANY EVIDENCE BEARING ON CHARACTER OF THE VICTIM OR VICTIM IMPACT

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
JUL 11 1996
T. MARK BADER
CLERK

Now comes John F. Holcomb, Prosecuting Attorney, and in opposition to the defendant's motion to prohibit any evidence bearing on the character of the victims or victim impact, filed herein on April 4, 1996, says that the defendant's argument is not well taken.

Defendant's argument fails to consider the fact that the cases on which he relies, *Booth v. Maryland* (1987), 482 U.S. 496, and *South Carolina v. Gathers* (1989), 490 U.S. 805, were overruled in *Payne v. Tennessee* (1991), 501 U.S. 808, which held that the Eighth Amendment erects no *per se* bar to the admission of victim-impact evidence. The Ohio Supreme Court has recognized this fact in numerous cases, *see, e.g.*, *State v. Fautenberry* (1995), 72 Ohio St.3d 435, 438-439, 650 N.E.2d 878, 882.

In *Fautenberry*, the Court held that "evidence which depicts *both* the circumstances surrounding the commission of the crime and also the impact of the murder on the victim's family may be admissible during *both* the guilt and the sentencing phases." *Id.* (Emphasis per the Court in *Fautenberry*.) The Court cited *State v. Loza* (1994), 71 Ohio St.3d 61, 82, 641 N.E.2d 1082, 1105, as an example

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where evidence relating to victim-impact (*e.g.*, the fact that one of the victims was pregnant) was admissible in the guilt phase of trial as facts surrounding the offense, and thus comments by the prosecutor in the sentencing phase relating to such victim-impact evidence was permissible. The Court in *Fautenberry* carefully pointed out that expressions of a witness's opinion as to the appropriate sentence, *e.g.*, that the victim's family desires that defendant be sentenced to death (as allowed by statute in most non-capital cases pursuant to R.C. 2943.041) are not admissible in a capital case. *Fautenberry*, 72 Ohio St.3d at 439, 650 N.E.2d at 882; *accord*, *State v. Huertas* (1990), 51 Ohio St.3d 22, 553 N.E.2d 1058, syllabus. However, the Court in *Fautenberry* specifically allowed testimony from the victim's family members and employer concerning the impact of the victim's death on his survivors. *Fautenberry*, *id.* at 438-439, 650 N.E.2d at 881-882.

Defendant is correct in stating that a pertinent character trait of the victim is admissible as provided in Evid.R. 404(A)(2), which provides:

> "Evidence of a pertinent trait of character of the victim of the crime offered by the accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible ***."

Thus, the admissibility of character evidence may depend on the issues raised in the case, which may make the victim's character relevant. This issue, therefore, cannot be determined as a sterile, abstract question without reference

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to the facts to be developed at trial.

WHEREFORE, the defendant's motion should be denied.

Respectfully submitted,

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Judge on that as well with regard to some of the specifications in this case. Specifically gun specifications. And I'll address that again when we get back there, ladies and gentlemen, those are all the elements of that aggravated robbery.

And these are, this is part and parcel of the first count of aggravated murder. Let's talk about the specifications to these murder counts.

These are the specifications that the law said must exist to make someone eligible for the death penalty. In addition to finding him guilty of aggravated murder, if this is true, he's eligible for the death penalty. What this says is that Ronald Gosser was a witness to an offense, and that he was purposely killed to prevent his testimony in any criminal proceeding regarding that offense.

And that the aggravated murder of Ronald Gosser was not committed during the commission, attempted commission, or flight immediately after the commission, or attempted commission of the offense to which Ronald Gosser was a witness. Okay. Break that down.

He was a witness to the DeAngelo shooting. Okay. His murder was not -- did not

EXHIBIT N

occur during the flight, during the commission of the shooting or during the flight immediately thereafter. His murder occurred some 45 minutes later, after they had left the area one time and had returned.

That element of that, that part of that is clearly satisfied. And that Ronald Gosser was a witness to an offense. That's the heart and soul of this case. It's what explains everyone's actions. We know that from Lieutenant Murray, we know it from Ronald Gosser himself. We know it from his fiancee. We know it because of the way he pleads with his killers. We know that from the way he pleads with them. I'm with you, I'm with you. That tells us that he's a witness and that he was purposely killed to prevent his testimony in any criminal proceeding regarding that offense.

Well, see, John Barefield didn't want to say on the stand when he was being crossed that he wanted to kill Ron Gosser. Was it ridiculous, was it absolutely ridiculous that he would deny that? He shot him in the back of the head, he didn't want to kill him. After he falls to the ground, shooting him six more times in the chest, and, boy, never had the intent to kill the guy? Is that just

absolutely ridiculous? That has no weight.

What has weight is what you know from Ron Gosser, and what you know from the other eyewitnesses presented by the State in this case. There is another way in this case that Lahray Thompson along with his partners are eligible for the death penalty, this is another specification.

There are a number of these laid out in the law that have to be met. But the aggravated murder of Ronald Gosser was committed while Lahray Thompson acting with prior calculation and design in the commission of the aggravated murder, Ronald Gosser was committing or attempting to commit the offense of aggravated robbery.

Okay. If you intentionally, purposely kill somebody while you're committing the aggravated robbery, that makes you eligible for the death penalty. It's a felony murder type concept. Okay. It's not simply because you're doing the aggravated robbery. But you know, there are inferences that you make in that area, about the type of force involved, the consequences of putting a gun to the back of somebody's head and discharging it.

I mean, there are inferences you make

about what the people were intending. Prior calculation and design. It is the same prior calculation and design which existed before.

Lahray Thompson knew why they were looking for Ronald Gosser, he knew that, that wasn't a mystery. It wasn't, well, let's go out and find Ron Gosser because we wanted to invite him to a party, it wasn't anything like that.

It was find the dude that talked to the police. Find the guy that's ratting on us, that dare tells on me. And Lahray Thompson knew that that's what they were doing.

This is the third specification, which makes it the death penalty eligible. It's that the aggravated murder of Ronald Gosser was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by Lahray Thompson with the aggravated robbery.

Ladies and gentlemen, it's quite obvious the intended effect of killing the fellow after you robbed him, and it's going to definitely have the effect of preventing his testimony, at least that's what they're intending. They didn't fully have that effect. They didn't know that.

Specification Four, that Lahray Thompson had a firearm on his person or under his control while committing the offense. Joyce Jones saw him with the firearm. She did. Ashley Gaither didn't say she saw that. She came up later, but you know, under the law, on or about his person includes an unarmed accomplice to an armed principal offender, that's the law on a gun specification.

If you jointly join in the criminal enterprise, and everybody knows that one has the gun and that he's going to use the gun in committing the offense, they're all responsible. You'll see that theory is, runs throughout the law. You want to discourage complicity. People are less likely to be successful without help. You discourage that.

On the final count, ladies and gentlemen of the jury, is the felonious assault of Barry DeAngelo. And ladies and gentlemen, this is the motive count. That's basically what it is. It's the motive. Okay. Butler County, Ohio, use of a deadly weapon, a .22 revolver, we've got the evidence of the bullets seized from the vehicle, we've got the gun and we've got the ballistics evidence that ties it to the shooting and to the

star witnesses? The star witnesses that they talk to you about in their opening statement? The star witnesses are Lawrence Jones. Lawrence Jones tells you what he's really all about, not on the stand, but in his letter that he writes to Lahray, I'm going to clear your name right off the map. Blood are thicker than water. You my family. That's there, it's his writing. He wrote it to Lahray.

They aren't set to snitch, if you got no choice, tell them John-John did it. Well, how does he know, he wasn't there. How is he going to say that? He can't say that, because he doesn't know. If they ask you, tell them you weren't nowhere around.

Well, why do you have to tell a person that they weren't anywhere around if they weren't anywhere around. Wouldn't they know that? Why do you have to tell them that? You see, the letter tells you where Lawrence Jones is coming from. You notice he made a point, a real point of saying he was the one wearing a checkered shirt?

Why does he say that, why does he offer that as an important factor? John Barefield, John Barefield is articulate, and a forceful speaker, and he makes for real interesting drama. But do

you think for one second that the man who already murdered one witness for trying to tell the truth, that the man who has it in him to put a gun directly to the back of somebody's head and murder them would think twice about telling you a lie? Would that be important to him? Would he care?

Does he have a value system that is anything like, anything like yours? No. He has a code he lives by, he told you about his code. He wouldn't think twice about it, and you know why, he's already done it.

He already sat in that same chair in front of a jury just like you and lied. And you know he wanted to just dismiss it, he just wanted to be able to say I lied, I told a lot of lies and have it be over with, you know, it's just not that simple. He didn't just tell one lie, he told about 50 pages worth of lies in detail and he had added some details.

And now he comes in this time, I'm telling you the truth, because I have nothing to gain and everything to lose. Well, ladies and gentlemen, we know what he does when he has something to lose, he lies and he advised anybody else, anybody else, he said that, anybody else who

is facing the death penalty needs to lie, too, you need to do the same thing, pardon my language, so save your ass, that's his advice, get on there, get your girlfriend in, get whoever in, and lie.

And you know, he's already won his victory when he lied his way out of the death penalty in this case. He's won his victory. Ladies and gentlemen, we know from John Barefield that, if we didn't know before, that you build an alibi by lying, by getting your friends and family to come in, that's important when you lie.

You know, it's a mockery, it's an absolute mockery. A lie is nothing but a tool. The truth has no independent value. A lie is a tool that gets yourself out of trouble. Is this Defendant above that? Is Lahray Thompson above that? When he was arrested, I'm Julius, my name is Julius. His name isn't Julius, is it? It's a lie.

And he told you why he lied, because he didn't want to be questioned about this offense. And you know the playing thing is, in a matter of seconds when he was arrested, he assembled a crowd and he called to the crowd to verify that he was Julius, say I'm Julius, I'm Julius.

FILED
2011 OCT 27 PM 12:46
MARY L. SWAIN
BUTLER COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,	:	**Case No. CR-1983-12-0614**
Plaintiff-Respondent,	:	**Judge Nastoff**
v.	:	
VON CLARK DAVIS,	:	**CAPITAL CASE**
Defendant-Petitioner.	:	

NOTICE OF APPEARANCE

Now come Kort Gatterdam and Erik P. Henry of Carpenter Lipps & Leland LLP, and hereby enter their official appearances as counsel for Defendant-Petitioner, Von Clark Davis, in the above named case.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Notice of Appearance was forwarded by first-class, postage prepaid U.S. Mail to Michael T. Gmoser, Butler County Prosecuting Attorney, 315 High Street, 11th Floor, Hamilton, Ohio 45011, on this 21st day of October, 2011.

Kort Gatterdam

050-384-297294